

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor



Margaret G. McHale
Chair

Ren Serey
Executive Director

STATE OF MARYLAND
CRITICAL AREA COMMISSION
CHESAPEAKE AND ATLANTIC COASTAL BAYS
1804 West Street, Suite 100, Annapolis, Maryland 21401
(410) 260-3460 Fax: (410) 974-5338
www.dnr.state.md.us/criticalarea/

January 4, 2008

Mr. Michael Enright
Chief of Staff
State of Maryland Executive Department
100 State Circle
Annapolis, Maryland 21401

RE: New Critical Area Publication –
Bay Smart: A Citizen's Guide to Maryland's Critical Area Program

Dear Mr. Enright:

Happy New Year! As we look ahead to the coming year, we are all joined in the hope that 2008 will bring us significantly closer to our mission of preserving and restoring our State waters.

It is with genuine pleasure that I enclose a copy of the Critical Area Commission's newest publication, *Bay Smart: A Citizen's Guide to Maryland's Critical Area Program*. This book, which was written and edited by Commission staff, is a comprehensive revision of the Commission's original citizen's guide published in 1991, *Critical Area and You: The Chesapeake's First Line of Defense*. Production and printing were made possible through a grant from the National Oceanic and Atmospheric Administration, administered by the Coastal Zone Management Division of the Department of Natural Resources.

Since the purpose of this update is to make as much information about the Critical Area Program available to as many citizens as possible, the Commission ordered several thousand copies, a good many of which have been recently delivered to the 64 local Critical Area programs for their distribution onsite. This book is a valuable resource that will likewise be distributed in conjunction with our newly initiated outreach and education program and through other community organizations. Interested parties are welcome to contact the Commission for additional copies. This publication is also available in the near future on our website at <http://www.dnr.state.md.us/criticalarea/download/baysmart.pdf>.

I hope that you find *Bay Smart* to be a useful tool in enhancing your understanding of the day-to-day implementation of the Critical Area Program. Please feel free to contact us if we may be of any further assistance.

Sincerely,

Margaret G. McHale
Chair

Enclosure

January 4, 2008

Michael	Enright
Martin	O'Malley
Anthony G.	Brown
Shari T.	Wilson
Robert	Summers
Jay	Sakai
Earl	Hance
Roger L.	Richardson
Richard	Hall
Royden	Powell
Amanda	Conn
Matthew	Gallagher
Lindsay	Ringgold
Donald F.	Boesch
Joseph	Bryce
Lisa	Jackson

Joan	Conway
Roy P.	Dyson
Gwendolyn T.	Britt
Richard F.	Colburn
Janet	Greenip
Andrew P.	Harris
Michael	Lenett
Paul	Pinsky
James C.	Rosapepe
Ryane	Necessary, Esq.
Virginia P.	Clagett
Barbara	Frush
Mary Roe	Walkup
Murray	Levy
Patrick	Tracy, Esq.
Norman	Stone

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January 7, 2008

Honorable Robert M. Bell, Chief Judge
634 Courthouse East
111 North Calvert Street
Baltimore, Maryland 21202

RE: New Critical Area Publication –
Bay Smart: A Citizen's Guide to Maryland's Critical Area Program

Dear Judge Bell:

Happy New Year! As we look ahead to the coming year, we are all joined in the hope that 2008 will bring us significantly closer to our mission of preserving and restoring our State waters.

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I hope that you find *Bay Smart* to be a useful tool in enhancing your understanding of the day-to-day implementation of the Critical Area Program. Please feel free to contact us if we may be of any further assistance.

Sincerely,

A handwritten signature in cursive script that reads "Margaret McHale".

Margaret McHale
Chair

Enclosure

Mailing January 7, 2008

Robert M.	Bell
Irma S.	Raker
Dale R.	Cathell
Glenn T.	Harrell, Jr.
Lynne A.	Battaglia
Clayton	Greene, Jr.
Joseph F.	Murphy, Jr.
Peter B.	Krauser
Arrie W.	Davis
Ellen L.	Hollander
James P.	Salmon
James R.	Eyler
James A.	Kenney, III
Deborah S.	Eyler
Sally D.	Adkins
Mary Ellen	Barbera
J. Frederick	Sharer
Timothy E.	Meredith
Patrick L.	Woodward
E.J.	Pipkin
Jamin B.	Raskin



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January 14, 2008

Honorable Joan Carter Conway, Chair
Senate Education, Health and Environmental Affairs Committee
2 West, Miller Senate Building
Annapolis, Maryland 21401

Honorable Maggie L. McIntosh, Chair
House Environmental Matters Committee
251 Lowe House Office Building
Annapolis, Maryland 21401

Honorable Roy Dyson, Senate Co-Chair
Joint Committee on the Chesapeake and Atlantic
Coastal Bays Critical Area
102 James Senate Office Building
Annapolis, Maryland 21401

Honorable Barbara Frush, House Co-Chair
Joint Committee on the Chesapeake and Atlantic
Coastal Bays Critical Area
207 Lowe House Office Building
Annapolis, Maryland 21401

Dear Senator Conway, Delegate McIntosh, Senator Dyson and Delegate Frush:

House Bill 1345 and Senate Bill 795, which became effective on June 1, 2004, were entitled *Chesapeake and Atlantic Coastal Bays Critical Area – Dwelling Units*. The bills define the term *dwelling unit* as it applies to the Critical Area, and require the 64 local Critical Area jurisdictions, including 16 counties, Baltimore City and 47 municipalities, to include all dwelling units within the calculation of residential density in the Resource Conservation Area. This density is limited to one dwelling unit per 20 acres.

January 14, 2008

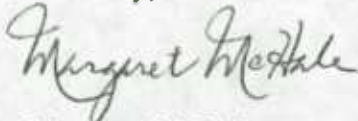
Page 2

The bills further provide for an exception to the density limit. The exception permits, at the local jurisdiction's discretion, one additional dwelling unit per lot or parcel in addition to the primary dwelling if the additional dwelling meets certain criteria for size, location, and waste disposal. Under § 8-1808.1(e)(3) of the Natural Resources Article, local jurisdictions are required to maintain records of additional dwelling units permitted under the exception and to report this information to the Critical Area Commission on a quarterly basis. The Commission is, in turn, required to report annually on the construction of these additional dwelling units, and this letter is filed in compliance with that requirement.

As of December 31, 2007 only Charles, Kent, Talbot and Worcester Counties have opted to amend their local Critical Area Programs to allow for an additional dwelling unit in the Resource Conservation Area, and no jurisdictions have reported the approval of any such dwelling units under this provision of the law.

The Critical Area Commission greatly appreciates the support of your Committees and looks forward to working with you during this legislative session. If you have questions about the program or need additional information, please contact me at (410) 260-3460 or Ren Serey, the Commission's Executive Director, at (410) 260-3462.

Sincerely,



Margaret McHale
Chair

cc: Honorable Thomas V. Mike Miller
Honorable Michael E. Busch
Karl S. Aro, Department of Legislative Services

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor



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Executive Director

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January 14, 2008

Honorable Jeanne D. Hitchcock
Secretary of Appointments
Jeffrey Building, 5th Floor
16 Francis Street
Annapolis, Maryland 21401

Re: Critical Area Commission for the Chesapeake and Atlantic Coastal Bays
2007 Attendance Record

Dear Secretary Hitchcock:

The 2007 attendance record of the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays is attached. The attendance calculations are based on the Commission's 10 official meetings held in 2007.

The Critical Area Act imposes a stricter attendance requirement than the general rule for State Boards and Commissions. Under Natural Resources Article, §8-1804 (c) (6), a Critical Area Commission member must achieve a 60% attendance record for the year. A member who fails to achieve the required attendance record is considered to have resigned. The statute provides that the Governor may waive the attendance requirement "for reasons satisfactory to the Governor."

Five of the six Commission members appointed during 2007 are included in the attached listing. (The sixth appointment was not finalized in time for participation in the December 2007 meeting.) Please note, however, that these members have served less than the statutory period of 12 months for calculating official attendance.

All current members who served throughout the 2007 reporting year met the 60% attendance requirement, except as noted below.

- Bruce Morrison, who represents the portion of Worcester County in the Chesapeake Bay watershed, attended two of the Commission's ten meetings. He missed several meetings while recovering from heart bypass surgery. Following his recovery, his employment changed and, according to Mr. Morrison, will likely change again soon. He has asked me to inform you that while he desires to

remain on the Commission, he may need to resign in the near future. He said he expects to know in a few weeks and will contact me at that time.

Mr. Morrison's position on the Commission must be filled by a local elected or appointed official who resides in the western, or Chesapeake Bay, side of Worcester County. The majority of the county population resides in the Atlantic Coastal Bays watershed. I recommend retaining Mr. Morrison as a Commission member until March 1, 2008, at which time his status should be reevaluated.

- The Honorable Richard Meehan, who represents the Atlantic Coastal Bays portion of Worcester County, attended three of the ten meetings held in 2007. However, the Critical Area statute specifies that the Mayor of Ocean City must hold one of the two Atlantic Coastal Bays positions on the Commission.

If you have questions or need additional information, please contact me at (410) 260-3460 or Ren Serey, the Commission's Executive Director, at (410) 260-3462.

Sincerely,



Margaret McHale
Chair

January 14, 2008

The following is a list of members of the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays. Attendance percentage is based on the meetings held from January 2007 through December 2007.

Commission Member / Jurisdiction

	Percentage Attended	Meetings Attended/ Held
Kevin Anderson, Somerset County	60%	(6/10)
Margo Bailey, Kent County	90%	(9/10)
David Blazer, Worcester County, Coastal Bays	90%	(9/10)
David Carroll, Baltimore County	90%	(9/10)
Charles Cawley, Caroline County	100%*	(1/1)
Reuben Collins, Charles County	50%*	(4/8)
Judith Cox, Cecil County	60%	(6/10)
Judith Evans, Western Shore At-Large	80%	(8/10)
Caroline Gabel, Queen Anne's County	86%*	(6/7)
C. Peter Gutwald, Harford County	100%	(10/10)
Richard Meehan, Ocean City	30%	(3/10)
S. Michael Mielke, Talbot County	80%	(8/10)
Bruce Morrison, Worcester County, Chesapeake Bay	20%	(2/10)
Norma Powers, Calvert County	100%*	(5/5)
Edward Prager, Eastern Shore At-Large	70%	(7/10)
Stevie Prettyman, Wicomico County	70%	(7/10)
Francis "Jack" Russell, St. Mary's County	100%*	(8/8)
Cathleen Vitale, Anne Arundel County	90%	(9/10)
Vacant through December 5, 2007 meeting – Baltimore City (New member: Laurie Feinberg)		
Vacant - Dorchester County		
Vacant - Prince George's County		

State Agency Members / Agency

Meg Andrews, Department of Transportation	90%	(9/10)
Frank Dawson, Department of Natural Resources	100%	(10/10)
Jason Dubow, Maryland Department of Planning	100%	(10/10)
Louise Lawrence, Department of Agriculture	100%	(10/10)
Rhonda Ray, Department of Business and Economic Development	80%	(8/10)
Gary Setzer, Department of the Environment	100%	(10/10)
Caroline Varney-Alvarado, Department of Housing and Community Development	100%	(10/10)

* Indicates member has served less than the 12-month reporting period.

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January 14, 2008

Ms. Jen Brock-Cancellieri
Outreach Manager
MD LCV and MD LCV Education Fund
9 State Circle, Suite 202
Annapolis, Maryland 21401

RE: New Critical Area Publication –
Bay Smart: A Citizen's Guide to Maryland's Critical Area Program

Dear Ms. Brock-Cancellieri:

Happy New Year! As we look ahead to the coming year, we are all joined in the hope that 2008 will bring us significantly closer to our mission of preserving and restoring our State waters.

It is with genuine pleasure that I enclose a copy of the Critical Area Commission's newest publication, *Bay Smart: A Citizen's Guide to Maryland's Critical Area Program*. This book, which was written and edited by Commission staff, is a comprehensive revision of the Commission's original citizen's guide published in 1991, *Critical Area and You: The Chesapeake's First Line of Defense*. Production and printing were made possible through a grant from the National Oceanic and Atmospheric Administration, administered by the Coastal Zone Management Division of the Department of Natural Resources.

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I hope that you find *Bay Smart* to be a useful tool in enhancing your understanding of the day-to-day implementation of the Critical Area Program. Please feel free to contact us if we may be of any further assistance.

Sincerely,

Margaret McHale
Chair

Enclosure

Page 1

UNITED STATES OF AMERICA
DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

January 12, 1964

Mr. J. Edgar Hoover
Director, FBI
Washington, D.C. 20535

Re: [Illegible]

Dear Sir:

[Illegible text]

[Illegible text]

[Illegible text]

[Illegible text]

[Illegible signature]

[Illegible text]

Mailing January 14, 2008

Beth	Jones
Frederick	Kelly
Ed	Merrifield
Kathy	Phillips
Martin	Madden
Harry	Hughes
Sarah	Taylor-Rogers
Hannah	Powers
Tom	Pelton
Joy	Oakes
Neal	Fitzpatrick
Mike	Tidwell
Terry J.	Harris
Andrew	Fellows
Jan	Graham
Betsy	Johnson
John	Reistrup
Robin	Lloyd
David	Fahrenthold
Will	Baker
Gerald	Winegrad
Lesley	Cook
Carol	Swan
Emily	Wilson
Cindy	Schwartz
Drew	Koslow
Ellen	Moyer
Richard	Israel
Steve	Bunker
David	Turner
Norman	Meadow

Kurt	Riegel
Neenah	Hoppe
Paul	Spadero
Anacostia	Watershed Society
Nick	Williams
Rob	Etgen
John	Frece
Chris	Swarth
Jefferson	Patterson Park
Jen	Brock-Cancellieri
Anne	Pearson
Barbara	Samorajczyk
Parris	Glendening
Sherrod	Sturrock

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Ren Serey
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January 25, 2008

Ms. Mary Kay Verdery
Talbot County Office of Planning and Zoning
28712 Glebe Road, Suite 2
Courthouse
Easton, Maryland 21601

Re: Amendment to Talbot County Critical Area Program – Enforcement Procedure

Dear Ms. Verdery:

The purpose of this letter is to officially notify you of the Critical Area Commission's action on the above referenced text amendment. On January 9, 2008, the Critical Area Commission concurred with my determination that the referenced text amendment to the Talbot County Critical Area Program could be reviewed as a refinement. This text amendment was approved by me on January 9, 2008.

This refinement shall be reflected in the County's Critical Area Program within 120 days of the date of this letter. Please provide a copy of the updated ordinance to Commission staff when it is available.

Thank you for providing us with the opportunity to review your text amendment request. If you have any questions, feel free to call me at (410) 260-3460.

Sincerely,

Margaret McHale
Chair, Critical Area Commission
cc: file

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor



Margaret G. McHale
Chair

Ren Serey
Executive Director

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January 28, 2008

Deborah A. Renshaw
Zoning Inspector
Town of St. Michaels
300 Mill Street
P.O. Box 206
St. Michaels, MD 21663

Re: St. Michaels Critical Area Program Text Amendment – Growth Allocation

Dear Ms. Renshaw:

The purpose of this letter is to officially notify you of the Critical Area Commission's action on the above referenced text amendment. On January 9, 2008, the Critical Area Commission concurred with my determination that the referenced text amendment to the St. Michaels Critical Area Program, which permits minor amendments to approved growth allocations, could be reviewed as a refinement. I have approved the proposal subject to the condition that the Town incorporate the changes found in the attachment titled, Changes Approved by Critical Area Commission Chair Ordinance 357 – Amendments to Approved Growth Allocations. I approved this text amendment on January 9, 2008.

This refinement shall be reflected in the County's Critical Area Program within 120 days of the date of this letter. Please provide a copy of the updated ordinance to Commission staff when it is available.

Thank you for providing us with the opportunity to review your text amendment request. If you have any questions, feel free to call me at (410) 260-3460.

Sincerely,

Margaret McHale
Chair, Critical Area Commission

cc: file
Roby Hurley, Critical Area Commission Circuit Rider, Town of St. Michaels

TTY for the Deaf

Annapolis: (410) 974-2609 D.C. Metro: (301) 586-0450



Changes Approved by Critical Area Commission Chair
Ordinance 357 –Amendments to Approved Growth Allocations

Approval Date: January 9, 2008

(Bold text indicates additions, while ~~strikethroughs~~ indicate deletions):

1. Page 3 G.(1) Conditions for Filing a Growth Allocation Amendment Application
subsubsection (d)[6]

Revise the following text:

Does not reduce the combined width of the tidal and non-tidal buffer, **tributary stream buffer**, and setback areas included in the Approved Concept Plan at any point, extending landwards from the mean high water line, **or the landward edge of tidal wetlands, whichever is more landward;**

2. Page 3 G.(1) Conditions for Filing a Growth Allocation Amendment Application
subsubsection 1 (d)[8]

Revise the following text:

Does not change the nature or increase the extent of any structures within the tidal or non-tidal wetland buffer, **tributary stream buffer**, or setback areas included in the Approved Concept Plan;

3. Page 3 G.(1) Conditions for Filing a Growth Allocation Amendment Application
subsubsection 1 (d)[11]

Add the following subsection:

Does not alter or affect any permits, approvals, or conditions issued or imposed by the Critical Area Commission relating to the Approved Concept Plan.

4. Page 4 G.(2) Filing the Growth Allocation Amendment Application
subsubsection 2
(a)[3]

Revise the following text:

The written findings of fact and decision of the Town Commissioners, **and the Critical Area Commission, if the Approved Growth Allocation was acted on by the Critical Area Commission or the Chair of the Critical Area Commission** relating to the Approved Growth Allocation, which purports to approve the Approved Growth Allocation, address whether and how the criteria for the award of growth allocation are satisfied, state the grounds for approval, and state the conditions upon which approval was granted.

5. Page 4 G.(2) Filing the Growth Allocation Amendment Application
subsubsection 2 (a)[4]

Revise the following text:

A complete concept plan depicting the subject land and the development sought by the Growth Allocation Amendment Application, drawn to the same scale ~~and~~, in the same manner as, **and containing the same information as** the concept plan as approved in

conjunction with the Approved Growth Allocation, to facilitate visual identification and comparison of the differences between concept plan for the Approved Growth Allocation with the concept plan for the development sought by the Growth Allocation Amendment Application. The concept plan submitted to the Town as part of the Growth Allocation Amendment Application shall not thereafter be changed by the Applicant except as requested by the Town Commissioners or with the express permission of the Town Commissioners. Any change in the concept plan may result in a delay of the proceedings to give other interested parties ample time to review and comment on the change.

6. Page 5 G.(3) Procedures

subsection 3(a) [1] [a]

Revise the following text:

A Growth Allocation Amendment Application shall not be permitted where it is solely for the tactical or other advantage of the Applicant, but may be permitted where on balance acceptance and processing of a Growth Allocation Amendment Application may be in the public interest, consent by the Town Commissioners to accept and process a Growth Allocation Amendment Application need not hinge on whether: [a] the time for filing a petition for judicial review relating to the Approved Growth Allocation has expired; or [b] a petition for judicial review relating to the Approved Growth Allocation has been filed and is pending; or [c] the Critical Area Commission has completed its processing and rendered its decision relating to the Approved Growth Allocation **(and/or any prior amendment thereof)**; provided, however, that the Town agrees to either withdraw from consideration by the Critical Area Commission and re-submit the pending Approved Growth Allocation **(and/or all prior pending amendments thereof)**, or to grant the Critical Area Commission one or more extensions of time for action on the pending Approved Growth Allocation **(and/or all prior pending amendments thereof)**, such that the Critical Area Commission is not placed in the position of having to simultaneously process and consider two or more separate submissions for growth allocation by the Town relating to the same project in order for the Critical Area Commission to meet the time provisions for processing such applications provided by law.

7. Page 8 G.(5) Acceptance of Amendment by Applicant

subsection 5 (b)

Revise the following text:

If the Growth Allocation Amendment Application is approved by the Town Commissioners, without alterations or conditions other than **or in addition to** those requested by the Applicant, then the Growth Allocation Amendment Application shall become effective immediately, **subject to paragraph 6 of this subsection G**, and all inconsistencies therewith in any previously existing growth allocation approval shall be rendered immediately void and of no effect.

8. Page 8 G.(5) Acceptance of Amendment by Applicant

subsection 5 (c)

Revise the following text:

If the Growth Allocation Amendment Application is approved by the Town Commissioners, with alterations or conditions other than those requested by the Applicant, then the decision of the Town Commissioners shall be stayed for thirty days

from the date on which it was mailed or hand-delivered to the Applicant by the Town Manager, and that decision shall take effect automatically, **subject to paragraph 6 of this subsection G**, at the end of that thirty-day period unless either:

9. Page 9 G.(5) Acceptance of Amendment by Applicant subsection (6)

Revise the following text:

Critical Area Commission. Upon approval of a Growth Allocation Amendment Application by the Town Commissioners, and upon acceptance of such approval of such Growth Allocation Amendment by the Applicant as provided above, the Town shall promptly notify the Critical Area Commission of such approval, and shall provide to the Critical Area Commission a copy of the written decision on the Growth Allocation Amendment Application by the Town Commissioners and so much of the Town's record relating thereto as the Town deems appropriate and/or the Critical Area Commission requests, for the Critical Area Commission to take such action thereon, if any, **as the Commission or the Chair of the Commission deems as-is** appropriate under the circumstances pursuant to the applicable provisions of Maryland Code, Natural Resources Article, Title 8 (Waters), Subtitle 18 (Chesapeake Bay Critical Area Protection Program), and the Code of Maryland Regulations, Title 27 (Critical Area Commission For The Chesapeake and Atlantic Coastal Bays), as amended from time to time.

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February 7, 2008

Tom Hamilton, Town Planner
City of Easton
14 South Harrison Street
P.O. Box 520
Easton, MD 21601

Re: Cooke's Hope Phase IV and V Growth Allocation

Dear Mr. Hamilton:

The purpose of this letter is to officially notify you of the Critical Area Commission's action on the above referenced growth allocation request. On February 6, 2008, upon discussion by the full Critical Area Commission on the matters outlined in the "Panel Discussion" section on Page 6 of the attached staff report, the Commission unanimously voted to deny the proposed program amendment to change the designation of 34.92 acres of Resource Conservation Area (RCA) land to an Intensely Developed Area (IDA).

In an effort to resolve the issues that resulted in the denial of this program amendment, the Critical Area Commission invites the Town to continue to work closely with Commission staff to revise the current proposal and assist in the submission of a new growth allocation request. Commission staff will be happy to discuss any considerations, concerns, or other relevant information that developed from discussion of this project throughout the amendment process.

Thank you for your help and cooperation with the Critical Area Commission throughout the review of this growth allocation request. If you have any questions, feel free to contact me at (410) 260-3460.

Sincerely,

A handwritten signature in cursive script, reading "Margaret G. McHale".

Margaret G. McHale
Chair

Enclosure

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February 14, 2008

Thomas B. Peregoy, President
Queenstown Commissioners
PO Box 4
Queenstown, MD 21658

RE: Queenstown –Text Amendments including: 2004 and 2006 Legislation, Impervious Surface Regulations and Growth Allocation Relocation; Ordinances 06-02, 06-06 and 07-05

Dear Mr. Peregoy:

The purpose of this letter is to officially notify you of the Critical Area Commission's Action on the above referenced text amendments. During the February 6, 2008 meeting the Critical Area Commission concurred with my determination that the above referenced text amendments could be reviewed as a refinement to the Queenstown Critical Area program. The Commission recommended that I approve these changes as submitted, and I did so at the February 6, 2008 meeting.

Under provisions of the Critical Area law, these changes must be officially incorporated into the Town's Critical Area Program by updating the ordinance within 120 days of the date of this letter. Please provide a copy of the updated ordinance when it becomes available. If you have any questions, please do not hesitate to contact me at (410) 260-3460.

Sincerely,

A handwritten signature in cursive script, reading "Margaret G. McHale".

Margaret G. McHale
Chair

cc: File
Roby Hurley, Circuit Rider

TTY for the Deaf

Annapolis: (410) 974-2609 D.C. Metro: (301) 586-0450

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March 28, 2008

Mr. John Kuriawa
NOAA/NOS/OCRM/Coastal Programs
NOAA Chesapeake Bay Program Office
410 Severn Avenue, Suite 107A
Annapolis, MD 21403

Dear Mr. Kuriawa:

Thank you for the opportunity to applaud the National Ocean and Atmospheric Administration's (NOAA) consideration in approving a reprogramming request by the Maryland Department of Natural Resources' Chesapeake and Coastal Program. The funds requested will be used to help deploy Maryland's Statewide basemap initiative – MD iMap. The MD iMap is a critical component of Governor O'Malley's current legislative initiative (Senate Bill 844/House Bill 1253) to clean up our State waters by strengthening Maryland's landmark water quality and habitat protection program – the Chesapeake and Atlantic Coastal Bays Critical Area Program – established in 1984.

Coastal counties and municipalities around the State, a total of 64 local jurisdictions, will be affected by this legislation. There are two cornerstone goals of this legislation: updating the critical area maps; and providing that information to the local governments in a form that is useful to them. It's the Governor's vision and mine that the State uses the best available information and modern mapping technologies to accomplish these goals. MD iMap will serve both as the source for mapping the new critical area line as well as the distribution mechanism to the local, coastal zone governments. MD iMap is being designed for use by State and local government agencies, including those in the coastal region of the State, as well as the general public via the Internet. NOAA has the unique opportunity to play a key and important role to facilitate serving this critical information to coastal communities via MD iMap. The proposed use of the grant funds will help the State launch MD iMap and will serve as the springboard for the State, as well as Maryland's Chesapeake and Coastal Program, to build applications necessary to inform decision-making related to Maryland's Coastal Zone.

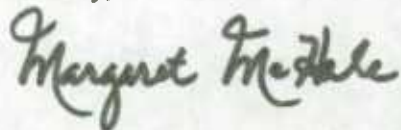
No doubt, I echo Governor O'Malley's appreciation for NOAA's vision and willingness to assist Maryland in making significant progress in cleaning up the Chesapeake and

Mr. John Kuriawa
March 28, 2008
Page Two

Atlantic Coastal Bays, thus affecting significant change in local growth and building policies as well as serving coastal community mapping needs.

I would be happy to discuss this in more detail if you wish. Please feel free to contact me by phone at 410.260.3460 or by email at mmchale@dnr.state.md.us.

Sincerely,

A handwritten signature in cursive script, reading "Margaret McHale".

Margaret G. McHale, Chair
Critical Area Commission for the Chesapeake and Atlantic Coastal Bays

cc: Kenny Miller, Maryland's Acting Geographic Information Officer
Matthew Fleming, Director, Chesapeake & Coastal Program
Laura Younger, Director, Grants and Funding Services

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor



Margaret G. McHale
Chair

Ren Serey
Executive Director

STATE OF MARYLAND
CRITICAL AREA COMMISSION
CHESAPEAKE AND ATLANTIC COASTAL BAYS

1804 West Street, Suite 100, Annapolis, Maryland 21401
(410) 260-3460 Fax: (410) 974-5338
www.dnr.state.md.us/criticalarea/

April 11, 2008

Mr. Greg Bowen
Calvert County
Department of Planning and Zoning
150 Main Street
Prince Frederick, Maryland 20678

Re: Calvert County Growth Allocation Request, Patuxent Plaza

Dear Mr. Bowen:

The purpose of this letter is to officially notify you of the Critical Area Commission's action on the above referenced growth allocation request. On April 2, 2008 the Commission concurred with my determination that the referenced growth allocation request could be reviewed as a refinement to the County's Critical Area Program and recommended approval.

Subsequently, I approved the use of 7.04 acres to change the County's designation of the Patuxent Plaza property from a Limited Development Area (LDA) to an Intensely Developed Area (IDA).

Please note that the refinement must be reflected on the County's Critical Area Maps within 120 days of the date of this letter. Please provide a copy of the revised map to Commission staff when it is available.

Thank you for your help and cooperation with the Critical Area Commission throughout the review of this growth allocation request. If you have any questions, please contact Ms. Amber Widmayer at (410) 260-3481.

Sincerely,

Margaret G. McHale
Chair

cc: Dave Brownlee

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor



Margaret G. McHale
Chair

Ren Serey
Executive Director

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May 6, 2008

Mr. Herb Reed
Maryland Cooperative Extension Service
P.O. Box 486
Prince Frederick, Maryland 20678

RE: Chesapeake Bay Trust Grant Application for Bay Smarter Workshop

Dear Mr. Reed:

It is with great pleasure that I am writing to you to express the Critical Area Commission's support of the planned one-day workshop *Bay Smarter: A Workshop for Waterfront Property Owners*. The Commission is extremely pleased to be one of the sponsors of this event, and I believe that it will be a great opportunity to inform and educate residential landowners within the Critical Area. Cumulatively residential landowners comprise a large percentage of the land stewards within the Critical Area, and it is essential that they know about and understand the Critical Area Program and how it is implemented at the local level.

It is my understanding that the planned workshop will include training sessions, roundtable discussions, a water tour, and site visit. This creative and varied approach should provide an interesting and informative day for all participants and offer something for everyone. The planned videotaping of the event will also afford an opportunity to educate those who cannot participate and should be a useful resource for Calvert County.

The staff of the Critical Area Commission looks forward to participating in this event, and we are pleased to be able to provide the workshop organizers with copies of *Bay Smart*, the Commission's citizens' guide to Maryland's Critical Area Program. As you know, education and training are essential elements of any successful resource protection program. It is only through comprehensive and coordinated efforts like this one that the Critical Area Program can be successfully implemented.

Sincerely,

Margaret G. McHale, Chair

TTY for the Deaf

Annapolis: (410) 974-2609 D.C. Metro: (301) 586-0450

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor



Margaret G. McHale
Chair

Ren Serey
Executive Director

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May 7, 2008

Mr. Richard Pollitt
County Executive, Wicomico County
Government Office Building, Room 303
P.O. Box 870
Salisbury, Maryland 21803-0870

RE: Notice of Action of Critical Area Commission Pursuant to Annotated Code,
Natural Resources Article §8-1809

Dear Mr. Pollitt:

This letter notifies you of action taken by the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays ("the Commission") at its regular meeting on May 7, 2008. The Commission voted to invoke the provisions of Annotated Code of Maryland, Natural Resources Article §8-1809 (l) to determine that the Wicomico County Critical Area Program contains a clear mistake, omission, or conflict with the Commission's law or criteria. The Commission determined that the County's Critical Area Program contains an omission: specifically the County's Program lacks provisions to ensure effective implementation and enforcement of the County's Critical Area law with regard to variances.

Natural Resources Article §8-1808 (c)(1)(xiii) requires each local critical area program to contain provisions for variances to the Critical Area Program consistent with the provisions in State law, and "in accordance with regulations adopted by the Commission concerning variances set forth in COMAR 27.01.11." COMAR 27.01.11.01 provides that "local jurisdictions shall make provision for ... variances...[and these] provisions shall be designed in a manner consistent with the spirit and intent of this chapter and all local Critical Area program elements." Moreover, COMAR 27.01.10.01 H requires that local jurisdictions "shall demonstrate that the local regulations and programs...are enforceable."

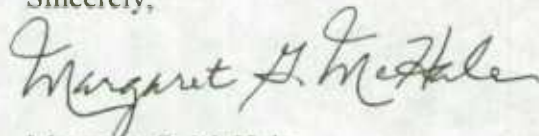
Recently, the County has informed the Commission that the County's Program (Article

VI, § 125-35-38) lacks provisions for the County to enforce the variance standards. According to the County, this omission in the County's program would require the County to accept and to process any variance application presented to the County, even if the requested project had been adjudicated as a violation of the Critical Area law. This situation presents a clear conflict with the County's stated requirement in Article IX, §125-46 that "[w]henver any provision of this chapter and any other provision of law....contain any restrictions covering any of the same subject matters, that provision which is more restrictive or impose [sic] higher standards or requirements shall govern."

For the County's Program to lack provisions to prevent the endless recycling of variance applications is a clear omission under Natural Resources Article §8-1809(1). Moreover, the County's variance standards have not been "designed in a manner consistent with the spirit and intent of" COMAR and the Critical Area Program. COMAR 27.01.10.01. Until the County corrects this omission, the County may not accept or process any variance application pursuant to Article VI §125-36 through 125-38 of the County Code.

Pursuant to Natural Resources Article §8-1809 (1) (3), from the date of this Notice, a project approval granted under part of a local program that the Commission has determined to be deficient shall be null and void. Please submit a proposed program amendment or program refinement to correct the above deficiency within 90 days.

Sincerely,

A handwritten signature in dark ink, appearing to read "Margaret G. McHale". The signature is fluid and cursive, with the first name "Margaret" being more prominent than the last name "McHale".

Margaret G. McHale
Chair

cc: Jack Lenox
Stevie Prettyman

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor



Margaret G. McHale
Chair

Ren Serey
Executive Director

**STATE OF MARYLAND
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CHESAPEAKE AND ATLANTIC COASTAL BAYS**

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www.dnr.state.md.us/criticalarea/

May 7, 2008

Mr. Richard Pollitt
County Executive, Wicomico County
Government Office Building, Room 303
P.O. Box 870
Salisbury, Maryland
21803-0870

RE: Notice from Chair of Critical Area Commission Pursuant to Annotated Code,
Natural Resources Article §8-1815 (b): Wicomico County's Failure to Enforce
Requirements of Local Critical Area Program

Dear Mr. Pollitt:

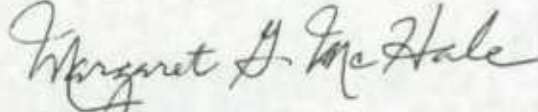
This letter notifies you of my determination that Wicomico County is failing to enforce the requirements of the County's Critical Area Program with regard to the development activity undertaken by Mr. Edwin Lewis in Wicomico County's Critical Area Buffer. In 2000, Mr. Lewis built six structures in the Critical Area Buffer on property known as Phillips Island. Mr. Lewis constructed these buildings without permits or variances. After eight years, and numerous appeals to the courts, the denial of Mr. Lewis' variance request is now final.

More than eleven months have passed since the Maryland Court of Appeals denied Mr. Lewis' final petition for certiorari. Yet, the illegal structures remain in the Buffer, in violation of the County's and the State's Critical Area law. Although the County ordered the structures to be removed, the County has failed to enforce its order.

This Notice is issued pursuant to Code, Natural Resources Article 8-1815(b). If, within 30 days of service of this notice, the County has failed to initiate an action to remedy or punish the violation, I shall refer this matter to the Attorney General.

Please contact me, or Marianne Dise, Commission Counsel (410) 260-3466, if you have any questions about this Notice.

Sincerely,

A handwritten signature in dark ink, appearing to read "Margaret G. McHale". The signature is fluid and cursive, with the first name "Margaret" being more prominent.

Margaret G. McHale
Chair

cc: Jack Lenox
Stevie Prettyman

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor



Margaret G. McHale
Chair

Ren Serey
Executive Director

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May 7, 2008

Mr. Larry R. Tom
Planning and Zoning Officer
Anne Arundel County Government
2664 Riva Road, P.O. Box 6675
Annapolis, Maryland 21401

Re: Approval of Three Refinements to Anne Arundel County's Critical Area Program:
Mapping Mistakes (Michael A. Daras, JWL Associates/William and Mary Magenau, and
James and Victoria Parkin)

Dear Mr. Tom:

The purpose of this letter is to officially notify you of my action on the three above-referenced Anne Arundel County Critical Area map changes, which constitute refinements to the County's adopted Critical Area program. On May 7, 2008, I presented these three matters to the Critical Area Commission and informed the Commission of my determination that the referenced map changes were refinements to the County's Critical Area Program. I then approved the three refinements.

Please note that the refinements must be reflected on the County's Critical Area Maps within 120 days of the date of this letter. Please provide a copy of the revised map to Commission staff when it is available.

Thank you for your assistance. If you have any questions, please contact Ms. Kerrie Gallo at (410) 260-3482.

Sincerely,


Margaret G. McHale
Chair

cc: Suzy Schappert
Eileen E. Powers, Esq.
Kathleen E. Byrne, Esq.
Anthony F. Christhilf, Esq.

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor



Margaret G. McHale
Chair

Ren Serey
Executive Director

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May 12, 2008

Thomas B. Peregoy, President
Queenstown Commissioners
PO Box 4
Queenstown, MD 21658

**RE: Town of Queenstown – Growth Allocation Relocation (Ordinance 08-02) and
Revised Map (Ordinance 08-03)**

Dear Mr. Peregoy:

The purpose of this letter is to officially notify you of the Critical Area Commission's Action on the above referenced map amendment and growth allocation request. During the May 7, 2008 meeting the Critical Area Commission concurred with my determination that the above referenced map amendment and growth allocation could be reviewed as refinements to the Queenstown Critical Area Program. The Commission recommended that I approve these changes to the Program as submitted, and I did so at the May 7, 2008 meeting with the following conditions.

1. The Buffer Management Plan for the project shall be submitted to Commission staff for Commission approval prior to final site plan approval by the Town.
2. The final development plan shall be submitted to staff for review and to the full Commission.

Under provisions of the Critical Area law, the changes must be officially incorporated into the Town's Critical Area Program by updating the ordinance and map within 120 days of the date of this letter. Please provide a copy of the updated ordinance and map when it becomes available. If you have any questions, please do not hesitate to contact me at (410) 260-3460.

Sincerely,


Margaret G. McHale, Chair

cc: Roby Hurley, MDP
Don Regenhardt, Queenstown Planning Commission Chairman
Amy W. Moore, Queenstown Town Clerk and Treasurer
Lex Birney, The Brick Companies
Case File QT 647-07

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor



Margaret G. McHale
Chair

Ren Serey
Executive Director

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May 12, 2008

Gail Webb Owings
Director
Department of Planning, Housing and Zoning
Kent County Government Center
400 High Street
Chestertown, Maryland 21620

**Re: Kent County Critical Area Program Text Amendment – Commercial Critical Area
Zoning District**

Dear Ms. Owings:

The purpose of this letter is to officially notify you of the Critical Area Commission's action on the above referenced text amendment. On May 7, 2008, the Critical Area Commission concurred with my determination that the above referenced text amendment to the Kent County Critical Area Program could be reviewed as a refinement. I approved this change to the County Program on May 7, 2008.

This refinement must be reflected in the County's Critical Area Program within 120 days of the date of this letter. Please provide a copy of the updated ordinance to Commission staff when it is available.

Thank you for providing us with the opportunity to review your text amendment request. If you have any questions, feel free to call me at (410) 260-3460.

Sincerely,

A handwritten signature in cursive script that reads "Margaret McHale".

Margaret McHale
Chair, Critical Area Commission
cc: file

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor



Margaret G. McHale
Chair

Ren Serey
Executive Director

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May 13, 2008

Office of the Attorney General
200 Saint Paul Place, 20th Floor
Baltimore, Maryland 21202

Dear Attorney General Gansler:

Pursuant to my authority in Code, Natural Resources Article 8-1815, by this letter, I refer to your Office the enforcement matter of John Bunting in Somerset County. As you know, the Director of Somerset County's Community and Technical Services requested assistance from the Critical Area Commission with this enforcement matter in December, 2007. After discussion with my staff, I believe that this matter would best be handled as an enforcement action by your Office.

The County has provided a copy of all relevant documents in its files, and I have forwarded those documents to you under separate cover. Please contact Marianne Dise (410) 260-3466, if you need assistance from the Commission staff. The Critical Area Commission very much appreciates the willingness of your Office to provide representation in this matter.

Sincerely,


Margaret G. McHale
Chair

MGM/jjd

cc: Mr. David Lloyd
Mr. Jack Willing
Mr. Robert Hess
Marianne Dise, Esq

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor



Margaret G. McHale
Chair

Ren Serey
Executive Director

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May 15, 2008

Mr. Eric S. Sennstrom, Director
Planning and Zoning
Cecil County Government
129 East Main Street
Elkton, Maryland 21921

Re: Cecil County Chesapeake Bay Critical Area Regulations
Refinement – Buffer Exemption Area Designation at Anchor Marina

Dear Mr. Sennstrom:

The purpose of this letter is to officially notify you of the Critical Area Commission's action on the above referenced Critical Area Program refinement. On May 7, 2008, the Critical Area Commission concurred with my determination that the change to the Cecil County Critical Area map could be reviewed as a refinement to the County's Critical Area Program. The Commission supported the County's changes and recommended approval. Subsequently, on May 7, 2008, I approved the designation of Tax Map 31, Parcel 1104 as a Buffer Exemption Area (BEA).

Please note that the approved portions of the refinement shall be reflected on the County's Critical Area Maps within 120 days of the date of this letter. In addition, please provide a copy of the revised map to the Commission when it is available.

Thank you for your help and cooperation with the Critical Area Commission throughout the review of this request. If you have any questions, feel free to contact me at (410) 260-3460.

Sincerely,

A handwritten signature in cursive script, reading "Margaret G. McHale".

Margaret G. McHale
Chair

cc: Mr. Tom Kemp, Kemp & Kemp
Mr. John Fellows, McCrone Inc.

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor



Margaret G. McHale
Chair

Ren Serey
Executive Director

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May 21, 2008

The Honorable Carolyn C. Sorge
P.O. Box 339, Third Ave.
Betterton MD 21610

Dear Mayor Sorge:

The purpose of this letter is to share news with you, a leader in your municipality's Critical Area program, regarding upcoming modifications in program administration.

As you may be aware, for many years the Critical Area Commission (CAC) has provided funding to the Maryland Department of Planning (MDP) toward two full-time positions. Although technically MDP employees, these circuit riders have worked directly with the town programs and focused largely on Critical Area planning issues.

Recently, the CAC and MDP met to discuss ways to focus our distinct agency roles and responsibilities. As a result of this meeting, effective July 1, 2008, the CAC will work directly with the municipalities in their local Critical Area program implementation, and MDP will devote its resources to core planning functions on the Eastern Shore. The same number of MDP positions will be dedicated to the Shore, though their work program will be slightly different and MDP will no longer be receiving CAC funding.

Under this arrangement, MDP will transfer one position to CAC, and the CAC will use the remainder of its previous MDP payment to supplement its staff with a part-time circuit rider whose sole responsibility will be municipal programs. Moreover, during the next several months of transition to more independently functioning programs, MDP will continue to work with the townships to ensure a smooth transition.

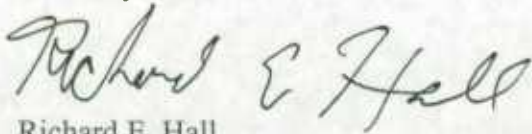
Given the many adjustments in local procedures that will likely be necessary as a result of this change, as well as many significant changes arising from the recent enactment of House Bill 1253, Commission staff will soon be scheduling regional meetings with all affected municipalities in order to lay the groundwork to move forward. In addition to these regional

May 21, 2008
Page Two

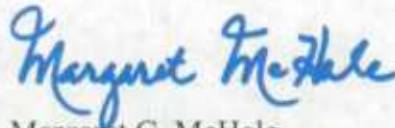
meetings and other meetings to come, CAC staff will develop training workshops and draft model Critical Area Program language for the use of the towns.

We look forward to working with you and responding to your needs by making the best use of our limited resources. If you have a Critical Area question prior to the scheduling of the regional meetings, please contact Ren Serey, CAC Executive Director, at rserey@dnr.state.md.us or 410-260-3462. If you have an MDP-related question, please feel free to contact Stephanie Martins at smartins@mdp.state.md.us or 410-767-4500.

Sincerely,



Richard E. Hall
Secretary, Maryland Department of Planning



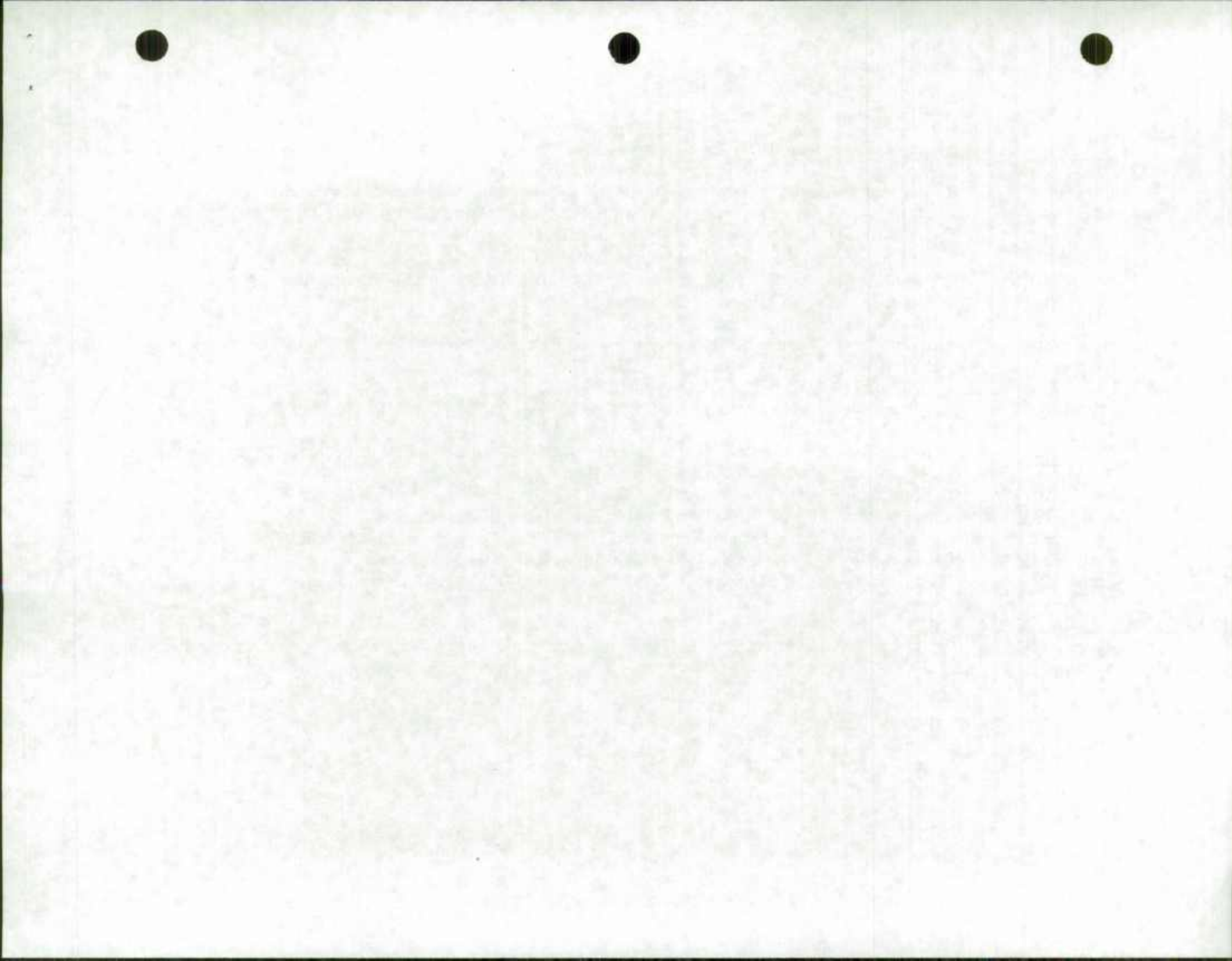
Margaret G. McHale
Chair, Critical Area Commission

Betterton:	The Honorable Carolyn C. Sorge P.O. Box 339, Third Avenue Betterton MD 21610
Cambridge:	The Honorable Cleveland L. Rippens City of Cambridge 705 Leonard Lane Cambridge MD 21613
Cambridge:	Anne Roane City of Cambridge 705 Leonard Lane Cambridge MD 21613
Centreville:	Town Council President Frank Charles Ogens 101 Lawyers Row Centreville MD 21617
Centreville:	Chris Clark P.O. Box 100 101 Lawyers Row Centreville MD 21617
Charlestown:	President, Town Commission Robert L. Gell P.O. Box 154 Charlestown MD 21914
Charlestown:	Henry Burden P.O. Box 154 241 Market St. Charlestown MD 21914
Chesapeake City:	The Honorable William August Kiessling Town Hall, 108 Bohemia Ave. Chesapeake City MD 21915
Chesapeake City:	Cristal Jordan P.O. Box 205 109 Bohemia Ave. Chesapeake City MD 21915
Chestertown:	The Honorable Margo G. Bailey Town Office, 118 North Cross St. Chestertown MD 21620
Church Hill:	President, Town Commission John P. Griffin P.O. Box 85 Town Hall, 324 Main St. Church Hill MD 21623
Church Hill:	Marie L. Rameika P.O. Box 85 Town Hall, 324 Main St. Church Hill MD 21837
Crisfield:	The Honorable Percy J. Purnell P.O. Box 270 City Hall, 319 West Main St. Crisfield MD 21817
Crisfield:	Calvin Dize P.O. Box 270 City Hall, Main St. Crisfield MD 21817
Denton:	The Honorable John A. Foster Municipal Offices Building 13 North Third St. Denton MD 21629
Denton:	Terry Fearins Housing & Community Development 13 N. Third St. Denton MD 21629
Federalsburg:	The Honorable Betty J. Ballas Town Hall 118 North Main St. Federalsburg MD 21632
Federalsburg:	Happy Mayer P.O. Box 471 118 Main St. Federalsburg MD 21632
Fruitland:	City Council President Gregory J. Olinde P.O. Box F City Hall, 401 East Main St. Fruitland MD 21826
Fruitland:	Richard M. Pollitt P.O. Box F 401 E. Main St. Fruitland MD 21826
Greensboro:	The Honorable David A. Spence P.O. Box 340 Town Hall, 111 South Main St. Greensboro MD 21639
Greensboro:	David A. Kibler P.O. Box 340 118 N. Main St. Greensboro MD 21639
Greensboro:	Jeanette DeLude P.O. Box 340 118 N. Main St. Greensboro MD 21639
Hillsboro:	President, Town Council Ronald A. Stafford P.O. Box 128 22043 Church St. Hillsboro MD 21641
Mardela Springs:	President, Town Council David A. Insley P.O. Box 81 Town Hall, 201 Station St. Mardela Springs MD 21837
Mardela Springs:	Fenda Whitlock P.O. Box 81 Mardela Springs MD 21837
Millington:	The Honorable T. Edward Robinson P.O. Box 330 Town Office, 402 Cypress St. Millington MD 21651
Millington:	David Teel P.O. Box 330 Millington MD 21651
North East:	The Honorable Robert F. McKnight P.O. Box 528 Town Hall, 106 South Main St. North East MD 21901
North East:	Melissa B. Cook-MacKenzie P.O. Box 528 106 S. Main St. North East MD 21901
North East:	Betsy Vennell P.O. Box 528 106 S. Main St. North East MD 21901

MDP-CAC 5-21-08 Letter - Recipients

Oxford:	President, Town Council Timothy B. Kearns P.O. Box 339 Town Hall, 100 North Morris St. Oxford MD 21654
Oxford:	Lillian Lord P.O. Box 339 100 North Morris St. Oxford MD 21654
Perryville:	The Honorable James L. Eberhardt P.O. Box 773 Town Hall, 515 Broad St. Perryville MD 21903
Port Deposit:	The Honorable Kerry Anne Abrams Town Hall, 64 South Main St. Port Deposit MD 21904
Port Deposit:	Darlene Ostroski 64 S Main St. Port Deposit MD 21904
Port Deposit:	Laura Luongo 64 S Main St. Port Deposit MD 21904
Princess Anne:	President, Town Council P. Franklin White Town Hall, 30489 Broad St. Princess Anne MD 21853
Princess Anne:	Winslow Parker 3089 Broad St. Princess Anne MD 21853
Queen Anne:	The Honorable Randolph L. Esty P.O. Box 365 Queen Anne MD 21657
Queenstown:	President, Town Commission Thomas B. Peregoy P.O. Box 4 Town Office, 7013 Main St. Queenstown MD 21658
Queenstown:	Amy Moore P.O. Box 4 Queenstown MD 21658
Queen Anne:	Juanita Kohn P.O. Box 365 Queen Anne MD 21657
Secretary:	The Honorable Susan B. Dukes P.O. Box 248 122 Main St. Secretary MD 21664
Secretary:	Yvonne Pritchett P.O. Box 248 Secretary MD 21664
Sharptown:	President, Town Commission Phillip D. Gosnell P.O. Box 338 Town Hall, 401 Main St. Sharptown MD 21861
Sharptown:	Judy Schneider P.O. Box 338 Sharptown MD 21861
Snow Hill:	The Honorable Stephen R. Matthews P.O. Box 348 103 Bank St. Snow Hill MD 21863
Snow Hill:	Karen Houtman P.O. Box 348 Municipal Building Snow Hill MD 21863
St. Michaels:	President, Town Commission Edward J. Doyle 300 Mill St. St. Michaels MD 21663
St. Michaels:	Debbie Renshaw P.O. Box 206 300 Mill St St. Michaels MD 21663
Vienna:	The Honorable Russell B. Brinsfield P.O. Box 86 Town Office, 214 Market St. Vienna MD 21869

Also emailed to: Serey, Ren; McHale, Margaret; 'rhall@mdp.state.md.us'; 'mpower@mdp.state.md.us'; 'aconn@mdp.state.md.us'; 'smartins@mdp.state.md.us'



Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor



Margaret G. McHale
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Ren Serey
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1804 West Street, Suite 100, Annapolis, Maryland 21401

(410) 260-3460 Fax: (410) 974-5338

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June 2, 2008

Office of the Attorney General
200 Saint Paul Place, 20th Floor
Baltimore, Maryland 21202

Dear Attorney General Gansler:

Pursuant to my authority in Code, Natural Resources Article 8-1815, by this letter, I refer to your Office the enforcement matter of Edwin Lewis in Wicomico County. As you know, the County Executive of Wicomico County requested assistance from the Critical Area Commission with this enforcement matter by letter of May 28, 2008. Both the County and the Commission request that your office handle this enforcement action.

The County has provided a copy of all relevant documents in its files, and I have forwarded those documents to you under separate cover. Please contact Marianne Dise (410)260-3466, if you need assistance from the Commission staff. The Critical Area Commission very much appreciates the willingness of your Office to provide representation in this matter.

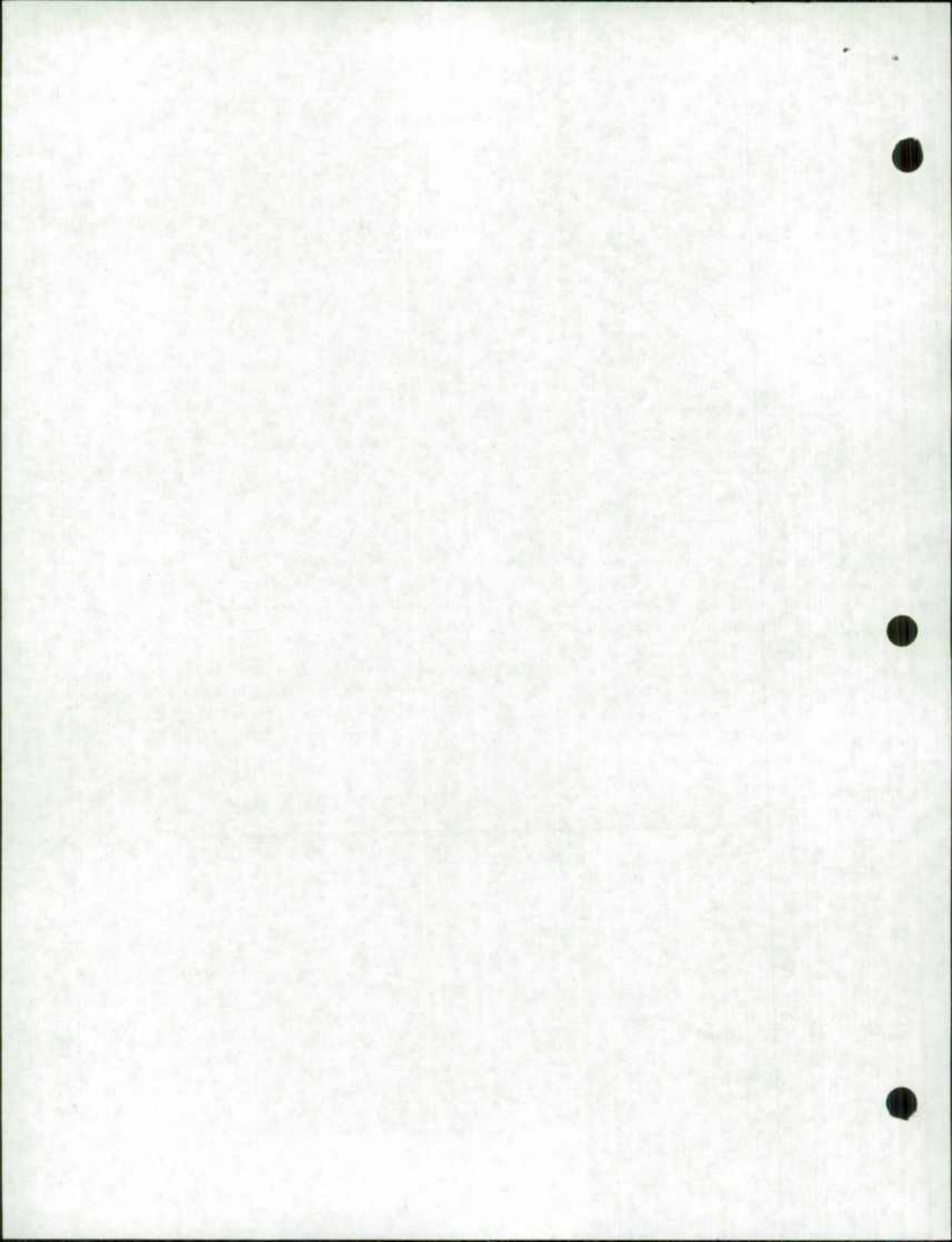
Sincerely,

A handwritten signature in cursive script that reads "Margaret G. McHale".

Margaret G. McHale
Chair

MGM/das

cc: Mr. Frank McKenzie
Mr. Richard M. Pollitt, Jr.
Marianne Dise, Esquire
Edgar A. Baker, Jr., Esquire



Wicomico County, Maryland

P.O. BOX 870
SALISBURY, MARYLAND 21803-0870
410-548-4801
FAX: 410-548-4803

RICHARD M. POLLITT, JR.
COUNTY EXECUTIVE

THEODORE E. SHEA, II
DIRECTOR OF ADMINISTRATION

EDGAR A. BAKER, JR.
COUNTY ATTORNEY

JAMES V. FINERAN
PUBLIC INFORMATION OFFICER

May 28, 2008

Margaret G. McHale, Chair
Critical Area Commission
1804 West Street, Suite 100
Annapolis, MD 21401

RE: Notice of Action of Critical Area Commission Pursuant to Annotated Code,
Natural Resources Article 8-1809

Dear Ms. McHale,

This letter is written to acknowledge receipt of correspondence dated May 7, 2008 regarding action of the Critical Area Commission of that same date. Specifically, the Commission has determined that "the County's program lacks provision to ensure effective implementation and enforcement of the County's Critical Area law with regard to variances".

As County Executive for Wicomico County, please be assured that we share the Commission's concern for the potential of "endless recycling of variance applications". As you are aware, our local Critical Area Program has been approved by your Commission, and our variance provision is consistent with that of other local jurisdictions across the State of Maryland. We welcome the opportunity to revise this provision of our Critical Area Program so that the Commission will be able to utilize it as a best practices model throughout the Chesapeake and Atlantic Coastal Bays.

In accordance with the Commission's determination, Wicomico County will not accept or process any variance application pursuant to Article VI Section 125-36 through 125-38 of the County Code. We are proceeding with the preparation of an amendment to address the identified concerns. The continued assistance of the Commission and staff is requested in this effort of state-wide significance.

While this procedural change affects all properties within the Critical Area, your attention to the specific development activity of Mr. Edwin Lewis is warranted. For over seven

years, the Office of the Attorney General has represented the State and defended the Wicomico County Board of Appeals' decisions. After eight years and numerous court appeals, the denial of Mr. Lewis' variance request is now final.

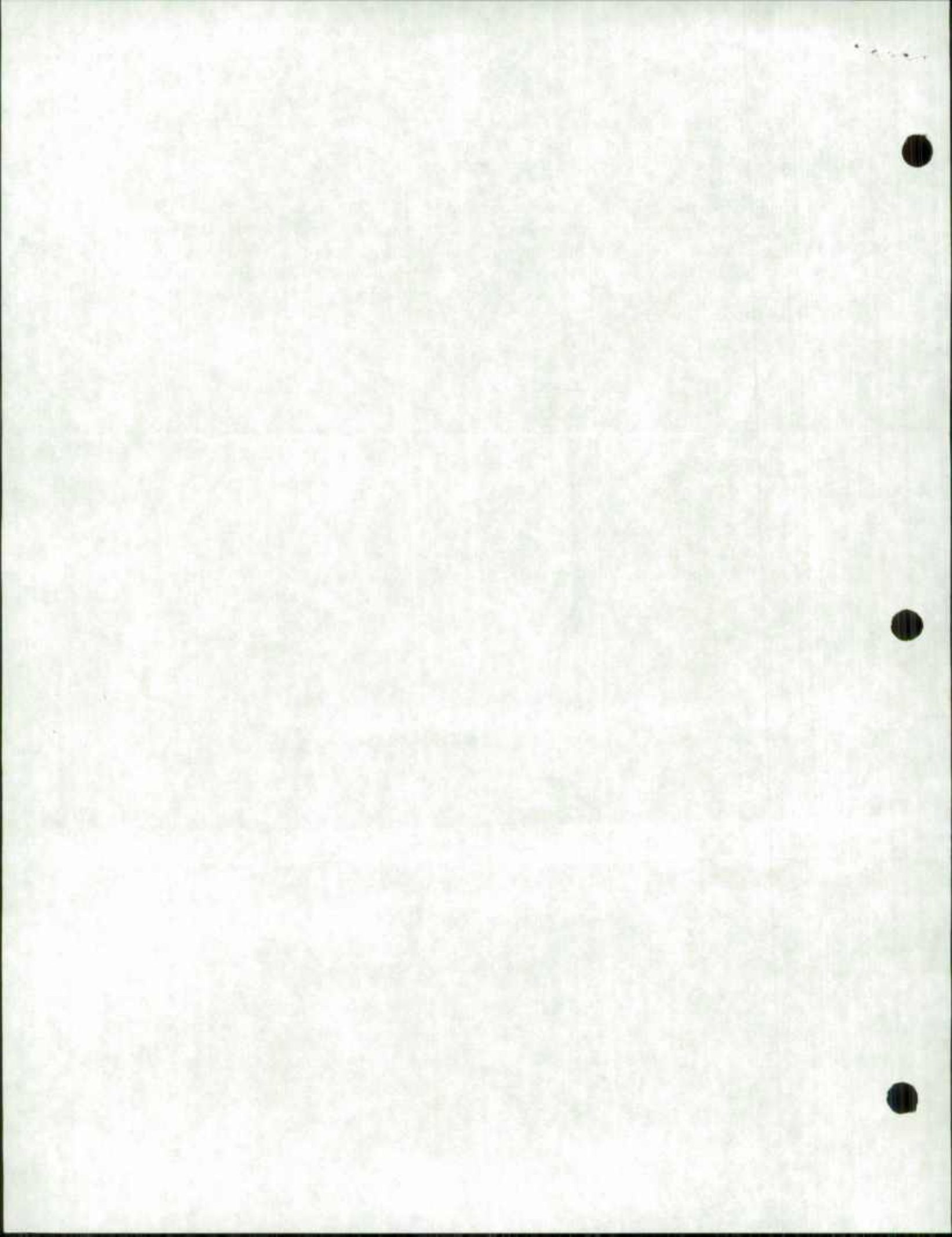
Wicomico County has consistently pursued removal of these structures located without permits, as well as the responsible restoration of the disturbed island property. This case has also become a matter of state-wide concern, with great significance to the effectiveness of the overall State Program. On behalf of Wicomico County, it is requested that the Commission join us in requesting that the enforcement of this order be assumed by the Office of the Attorney General.

Sincerely,

A handwritten signature in dark ink, reading "Richard M. Pollitt, Jr." with a stylized flourish at the end.

Richard M. Pollitt, Jr.
County Executive

cc: John Cannon, Council President
Stevie Prettyman, Critical Area Commission
Marianne Dise, Assistant Attorney General



Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor



Margaret G. McHale
Chair

Ren Serey
Executive Director

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June 6, 2008

Mr. Daniel Powell
County Administrator, Somerset County
County Commissioners' Office
11916 Somerset Avenue
Princess Anne, Maryland 21853

RE: Notice of Action of Critical Area Commission Pursuant to Annotated Code,
Natural Resources Article §8-1809

Dear Mr. Powell:

This letter notifies you of action taken by the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays ("the Commission") at its regular meeting on June 4, 2008. The Commission voted to invoke the provisions of Annotated Code of Maryland, Natural Resources Article §8-1809 (l) to determine that the Somerset County Critical Area Program contains a clear mistake, omission, or conflict with the Commission's law or criteria. The Commission determined that the County's Critical Area Program contains an omission: specifically the County's Program lacks provisions to ensure effective implementation and enforcement of the County's Critical Area law with regard to variances.

Natural Resources Article §8-1808 (c)(1)(xiii) requires each local critical area program to contain provisions for variances to the Critical Area Program consistent with the provisions in State law, and "in accordance with regulations adopted by the Commission concerning variances set forth in COMAR 27.01.11." COMAR 27.01.11.01 provides that "local jurisdictions shall make provision for ... variances...[and these] provisions shall be designed in a manner consistent with the spirit and intent of this chapter and all local Critical Area program elements." Moreover, COMAR 27.01.10.01 H requires that local jurisdictions "shall demonstrate that the local regulations and programs...are enforceable."

Recently, the County has informed the Commission that the County's Program (Zoning Code Section 9) lacks provisions for the County to enforce the variance standards and conditions

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Mr. Powell
June 6, 2008
Page Two

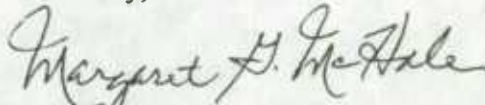
imposed by the Board of Appeals. According to the County, this omission in the County's program would require the County to accept and to process any application for a hearing regarding a variance, even if the requested project is in violation of the terms of a County order under the Critical Area law.

For the County's Program to lack provisions to authorize the County to refuse acceptance of new applications regarding projects which have been finally decided by the Board of Appeals is a clear omission under Natural Resources Article §8-1809(l). This omission in the County's variance standards prevents the County from administering its program "in a manner consistent with the spirit and intent of" COMAR and the Critical Area Program. COMAR 27.01.10.01. Until the County corrects this omission, the County may not accept or process any Critical Area variance application under Zoning Ordinance Section 9.

Pursuant to Natural Resources Article §8-1809 (l) (3), from the date of this Notice, a project approval granted under part of a local program that the Commission has determined to be deficient shall be null and void. Please submit a proposed program amendment or program refinement to correct the above deficiency within 90 days.

I look forward to working with you to resolve this matter.

Sincerely,



Margaret G. McHale
Chair

MGM/jjd

cc: Jack Willing
Kevin Anderson

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor



Margaret G. McHale
Chair

Ren Serey
Executive Director

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June 10, 2008

Gail Webb Owings
Director
Department of Planning, Housing and Zoning
Kent County Government Center
400 High Street
Chestertown, Maryland 21620

Re: Drayton Retreat Center Growth Allocation

Dear Ms. Owings:

The purpose of this letter is to officially notify you of the Critical Area Commission's action on the above referenced growth allocation request. On June 4, 2008, the Critical Area Commission approved the County's designation of 31.991 acres of land from Resource Conservation Area (RCA) to Intensely Developed Area (IDA); the Commission voted to adopt the Panel's recommendations, including the following conditions:

1. Prior to the start of construction, the County will submit to Commission staff a copy of the MDE permit for the proposed onsite drip irrigation system.
2. Prior to the start of construction, the County will submit to Commission staff a copy of the MDE permit to allow an increase in the gallons per day of water pumped from the existing Drayton well.
3. Prior to the start of construction, the County will submit to Commission staff copies of the approved stormwater management and sediment and erosion control permits.
4. Prior to the issuance of any permits or final approvals by the County, a detailed Buffer Management Plan at an appropriate scale shall be prepared and submitted to the full Commission for review and approval. The Buffer Management Plan shall include, but is not limited to: the 100-foot and Expanded Buffer; the proposed living shoreline; all existing or proposed trails or portions of trails located within the Buffer or within 100-feet of the landward edge of the Buffer; proposed management measures related to historic views, in which forest cover will be maximized whenever possible but provide Commission staff the flexibility to maintain historic viewsheds while recognizing that the goals of the Critical Area law require protection of habitat and natural resources values; access to piers, and removal of exotic or invasive species; and a landscaping plan showing all removal of existing vegetation and proposed supplemental planting as required to establish the Buffer. In addition, the Buffer Management Plan shall include provisions for maintenance, survival, monitoring, and replanting for five years, and provisions for

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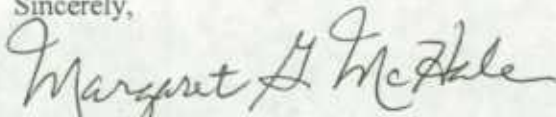
the collection of a bond by the County in an adequate amount to ensure effective implementation for the full five- year period.

5. The 300-foot setback shall be established in forest vegetation as the 100-foot Buffer in order to provide appropriate riparian forest cover for wildlife that are currently using the site. Forest cover shall be maximized whenever it is possible, yet still provide Commission staff the flexibility to maintain historic viewsheds while recognizing that the goals of the Critical Area law require protection of habitat and natural resources values. The establishment and maintenance of this area shall be included within the Buffer Management Plan for the project. This area shall also be bonded to ensure effective implementation.
6. The Panel acknowledges that the County's "Exhibit C" (Restrictions, Conditions, and Limitations) to the County Commissioners' Resolution granting growth allocation for the Drayton Project provides the following:
 - The Granting of growth allocation is subject to a finding by the State Critical Area Commission that growth allocation is consistent with State Critical Area laws and regulations; and
 - Significant view corridors from the site and into the site will be preserved and enhanced as approved by the Kent County Planning Commission.

The Panel determined that the "significant view corridors" may not be consistent with State Critical Area laws and regulations, in particular Natural Resources Code § 8-1808.1 and COMAR 27.01.02.06 and .09. Accordingly, the Panel determined that the Buffer Management Plan provided in Conditions 4 and 5 above, as finally approved by the Critical Area Commission, may not include all or any of the view corridors requested by the County. In the event that no view corridors are provided in the final Buffer Management Plan as approved by the full Critical Area Commission, the County shall ensure that "Exhibit C" is modified accordingly and that the modified Exhibit is recorded in the land records. The recordation of the executed Agreement for Restrictions, Conditions, and Limitation on Land Receiving Growth Allocation, as currently submitted in draft by the County, and attached to this Report, is a condition of the Panel's recommended approval. The County shall submit a copy of the executed Agreement evidencing recordation to Commission staff.

Thank you for your help, hard work, and cooperation with the Critical Area Commission throughout the review of this growth allocation request. If you have any questions, feel free to contact me at (410) 260-3460.

Sincerely,



Margaret G. McHale
Chair

cc: Amy Moredock, Kent County Planning and Zoning
Marianne Dise, Critical Area Commission Counsel

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor



Margaret G. McHale
Chair

Ren Serey
Executive Director

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June 12, 2008

Elmer E. Horsey
Patricia Joan O. Horsey
19 Byford Court
PO Box 237
Chestertown, MD 21620

Dear Mr. and Mrs. Horsey:

My sincere apology for not writing sooner in response to your letter of April 10.

On April 28 the Critical Area Commission complied with your request to notify Commission members regarding the *Chesapeake Bay Magazine* article on the Critical Area Program and its mischaracterization of your home as "controversial." It was my oversight, however, not to have previously confirmed that follow-through in writing.

As per your request, each Commission member received a copy of your April 10 letter, plus the enclosures you provided – that is, the June 27, 1991 letter from Sarah J. Taylor, then Executive Director of the Commission, to then-Mayor Horsey, as well as the April 2008 Correction published by *Chesapeake Bay Magazine*. These documents were provided to Commission members in tandem with materials related to preparation for our monthly Commission meeting on May 7.

My hope is that your minds can now be at ease regarding this matter. All the best for a beautiful and most enjoyable summer.

Sincerely,

Margaret McHale
Chair

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June 13, 2008

Michael E. Busch
Speaker of the House
State House
Annapolis, MD 21401-1991

Dear Mr. Speaker:

First, let me thank you for your unwavering leadership in support of HB 1253. Honestly, I count your personal interest in Bay issues and your commitment to stronger Critical Area enforcement as a main reason that the bill passed -- with the flying colors of strong bi-partisan support, no less!

As you requested, I looked into the redevelopment of the property at 906 Creek Drive in Annapolis. In early February, in fact, I happened to have visited the next-door property with Commission staff at the invitation of Dr. Beth Garraway, the owner on the other side of the property from Mr. Michael Jones. She had asked that we observe the ongoing construction of the new house and advise her whether the work was consistent with the Critical Area law and the City's local program.

As I watched the construction that day, I had two thoughts. I was struck immediately by the environmental disturbance I observed so close to Spa Creek. And I realized again how difficult it is to fashion a State Critical Area law, implemented by local governments through their codes, and still ensure fair treatment of the rights and concerns of so many parties.

On several occasions, our office has been in touch with Mr. Jones and tried to explain why we believe the house at 906 Creek Drive has been sited in accordance with the applicable laws. His sincerity in support of the environment and the Critical Area law is unquestioned. Through his extensive research of the local regulations and State law, he believes that the new house is simply in the wrong place. I must admit that if we considered only the broad goals of the law, he may be right. But there are other factors involved that complicate that initial assessment.

The Critical Area law properly encourages local jurisdictions to design alternative provisions to the 100-foot Buffer to apply in existing urban areas like the Creek Drive neighborhood. These provisions recognize that thousands of houses and businesses predate the 1984 law. In these older communities, local jurisdictions employ a variety of mechanisms to regulate

Speaker Michael E. Busch

June 13, 2008

Page Two

redevelopment. The City of Annapolis establishes a setback line by averaging the existing setbacks in a 300-foot area on either side of a proposed redevelopment site.

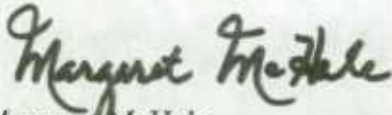
Mr. Jones has correctly pointed out that the City's measurement places the new house directly on steep slopes, which should have been protected. Indeed, environmentally speaking, it would have been preferable to locate the house further from the shoreline. But the Critical Area law doesn't require a minimum setback along already developed shorelines like this section of Annapolis. Instead, under the law, local jurisdictions may propose alternatives for minimum urban setbacks and the Critical Area Commission can accept the alternatives or reject them. The Commission approved the local program for Annapolis in 1989, and the location of the new construction is in accordance with that local law.

Moreover, likewise under local law, some Annapolis neighborhoods have had the option of additional environmental protections in their area (which may have covered this situation) if the residents vote in favor of R2-NC zoning – that is, a single family residential neighborhood conservation district. As I understand it from Dr. Garraway, however, the residents of this area, have previously rejected those additional conservation measures by voting down the R2-NC zoning.

In summary, for nearly 20 years our coordination with the Annapolis Critical Area Program and our monitoring of its implementation of the law point to a successful program. Nevertheless, of course, there is always room for improvement. Given the enactment of HB 1253, we have many matters, including Buffer protection, to discuss not only with Annapolis but with all of the 63 other local Critical Area jurisdictions. We will do our best to explore other alternatives with the City and see if we can design a better way to handle these situations.

Again, my deep thanks for all you do to preserve Maryland's natural beauty and make it stronger for the future. I hope you are having a good and relaxing summer!

Sincerely,



Margaret McHale
Chair

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor



Margaret G. McHale
Chair

Ren Serey
Executive Director

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June 17, 2008

Mr. William Watson
The Town of Chesapeake Beach
P.O. Box 400
Chesapeake Beach, MD 20732

Re: Chesapeake Beach Growth Allocation Request, The Home Place

Dear Mr. Watson:

The purpose of this letter is to officially notify you of the Critical Area Commission's action on the above referenced growth allocation request. On June 6, 2008 the Commission concurred with my determination that the referenced growth allocation request could be reviewed as a refinement to the County's Critical Area Program and recommended approval.

Subsequently, I approved the use of 4.72 acres to change the County's designation of the Homeplace property from a Limited Development Area (LDA) to an Intensely Developed Area (IDA) with the following conditions:

1. The applicant shall provide the Commission with documentation of Calvert County's stormwater review and approval of the project prior to start of construction.
2. Documentation of adequate long term inspection and maintenance of all stormwater facilities associated with the project shall be provided to Commission staff and, if necessary, the full Commission, for review and approval prior to the start of construction.

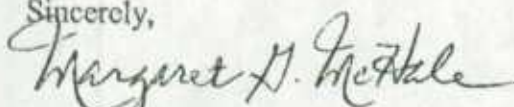
Please note that the refinement must be reflected on the County's Critical Area Maps within 120 days of the date of this letter. Please provide a copy of the revised map to Commission staff when it is available.

Thank you for your help and cooperation with the Critical Area Commission throughout the

Mr. Watson
June 17, 2008
Page 2 of 2

review of this growth allocation request. If you have any questions, please contact Ms. Amber Widmayer at (410) 260-3481.

Sincerely,

A handwritten signature in cursive script, reading "Margaret G. McHale". The signature is written in dark ink and is positioned above the printed name and title.

Margaret G. McHale
Chair

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor



Margaret G. McHale
Chair

Ren Serey
Executive Director

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June 27, 2008

Mr. Len Casanova
DNR – Engineering/Shore Erosion Control
580 Taylor Ave, D-3
Annapolis, MD 21401

RE: Black Walnut Point Road, Emergency Shore Erosion Control

Dear Mr. Casanova:

Shawn Ryan of your staff has provided information regarding the emergency work needed on Black Walnut Point Road within the Black Walnut Point NRMA. It is our understanding that there is an immediate need to install a stone revetment along approximately 127 linear feet of shoreline where existing bulkheads have failed. The proposed revetment is similar in design to revetments approved by the Commission for another portion of the shoreline in the same vicinity. It is our understanding that a comprehensive assessment of the entire shoreline of the NRMA is underway and that future shoreline work is anticipated in the next year.

COMAR 27.02.07.04(D) allows certain development projects that otherwise require Commission review and approval to be reviewed under a time frame that is less than what is standard for State and local agency project. The Chair is authorized to approve, deny or condition the request for development and shall notify the full Commission and any affected local jurisdiction of her decision within 15 days. Pursuant to this section, I am approving the project with the following conditions:

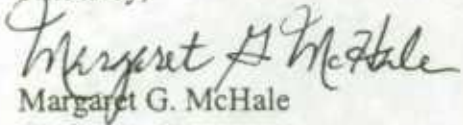
1. The work authorized by this approval shall be included in the larger shoreline project at the Black Walnut Point NRMA when it is submitted to the Commission for review and approval.
2. Mitigation shall be provided at a 1:1 ratio for all disturbance within the Buffer.

The Commission shall be notified of this approval at the July 9th, 2008 Commission meeting. In addition, Talbot County shall be notified through receipt of a copy of this letter.

Mr. Len Casanova
June 27, 2008
Page 2 of 2

Thank you for coordinating with our office in handling this emergency situation. If you have any questions, please contact LeeAnne Chandler or Nick Kelly of my staff at (410) 260-3460.

Sincerely,

A handwritten signature in dark ink, appearing to read "Margaret G. McHale". The signature is fluid and cursive, with the first name "Margaret" and last name "McHale" clearly distinguishable.

Margaret G. McHale

Chair

cc: Mary Kay Verdery, Talbot County Planning & Zoning
Doldon Moore, Wetlands Administrator, Board of Public Works
Shawn Ryan, DNR
Project File

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor



Margaret G. McHale
Chair

Ren Serey
Executive Director

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July 16, 2008

Chris McCabe
Natural Resource Administrator
Worcester County
One West Market Street, Room 1201
Snow Hill, MD 21863

RE: Map Amendment – Rios Property Mapping Mistake (Resolution Number 08-06)

Dear Mr. McCabe:

The purpose of this letter is to officially notify you of the Critical Area Commission's action on the above referenced map amendment. During the July 9, 2008 meeting the Critical Area Commission concurred with my determination that the above map amendment could be reviewed as a refinement to the County Critical Area Program. The Commission recommended that I approve the change to the Program as submitted, and I did so at the July 9, 2008 meeting.

Under provisions of the Critical Area law, the change must be officially incorporated into the Atlantic Coastal Bays Critical Area Program by updating the map within 120 days of the date of this letter. Please provide a copy of the updated map when it becomes available. If you have any questions, please do not hesitate to contact me at (410) 260-3460.

Sincerely,

A handwritten signature in cursive script that reads "Margaret G. McHale".

Margaret G. McHale, Chair
Critical Area Commission

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Governor

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July 16, 2008

Chris McCabe
Natural Resource Administrator
Worcester County
One West Market Street, Room 1201
Snow Hill, MD 21863

**RE: Text Amendment – Atlantic Coastal Bays Critical Area Mapping Methodology
(Emergency Bill Number 08-3)**

Dear Mr. McCabe:

The purpose of this letter is to officially notify you of the Critical Area Commission's action on the above referenced text amendment. During the July 9, 2008 meeting the Critical Area Commission concurred with my determination that the above text amendment could be reviewed as a refinement to the County Critical Area Program. The Commission recommended that I approve the change to the Program as submitted, and I did so at the July 9, 2008 meeting.

Under provisions of the Critical Area law, the change must be officially incorporated into the Atlantic Coastal Bays Critical Area Program by updating the ordinance within 120 days of the date of this letter. Please provide a copy of the updated ordinance when it becomes available. If you have any questions, please do not hesitate to contact me at (410) 260-3460.

Sincerely,

Margaret G. McHale, Chair
Critical Area Commission

TTY for the Deaf

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Martin O'Malley
Governor

Anthony G. Brown
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Margaret G. McHale
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August 8, 2008

Douglas B. McCoach III
Director of Planning
City of Baltimore Department of Planning
417 East Fayette Street, 8th Floor
Baltimore, MD 21202

Dear Mr. Douglas B. McCoach III:

As you are already aware, during this past legislative session, House Bill 1253, sponsored by Governor O'Malley, was passed. It became effective last month on July 1, and it requires local governments to apply its provisions even though there has not yet been sufficient time to amend local ordinances and program documents.

The bill includes several important changes that will greatly affect the way in which you, in the front lines of preserving our State's precious water and habitat resources, will implement your local Critical Area program. Given that the original Critical Area Program had been in effect for more than 20 years, providing plenty of lived experience of what was working and what was not working, it was time for a comprehensive overhaul. Many thanks to all of you who provided invaluable input over the many months of putting ideas down on paper and then moving those ideas through the process to successful legislation.

Because the changes made by House Bill 1253 are extensive, I am writing to summarize the scope of those changes and provide you with some written materials that will hopefully guide you as you move through the bill to make your local program changes. Please note that these materials are summary in nature; they are not an exhaustive list of every aspect of the legislation. We presume that you and your staff have independently spent time with the bill and formulated your own "to do" list applicable to your specific program, and we anticipate frequent conversations along the way between your office and ours. Also, these materials are prepared with the presumption that readers will already be familiar with the Critical Area Program and its requirements; therefore, commonly used program terms and abbreviations are not explained. For your further reference, page and line numbers in parentheses indicate where in the bill to locate the specific language cited. (If you would like to review the bill, it is easily accessible at: www.mlis.state.md.us. After clicking Bill Info and Status, plug in HB 1253 and submit



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NEW YORK, N. Y. 10017



August 8, 2008

Page Two

query. Scroll down to the bottom, and under Bill Text select Chapter.)

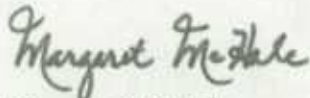
Enclosed with this letter are three attachments.

- o Attachment A - An abbreviated list of the changes effective July 1, 2008
- o Attachment B - A more comprehensive explanation of key components of the legislation
- o Attachment C - A sample letter (July 2, 2008) from Marianne Dise, Principal Counsel to the Critical Area Commission, regarding key components of House Bill 1253 in effect as of July 1, 2008

In addition, House Bill 1253 gave the Commission the authority to adopt regulations – so as to make the Program more predictable and streamlined, while providing flexibility for local differences. The process of drafting and adopting regulations will provide ample opportunity for your comments and recommendations. In fact, I look forward to, and am counting on, your participation. Presently, Commission staff is working toward this fall when we expect to introduce our first regulatory proposal, and then other subject areas listed in the bill will follow. Likewise, for your assistance the staff is currently drafting model ordinance language for certain bill provisions, which is also anticipated in the fall.

In conclusion, I hope that the enclosed materials will help you as you move forward from the requirements of the old law to the new. The Commission staff and I, as well as the Office of the Attorney General, would be happy to assist you whenever you have any questions or need for additional information. And as we all move through this time of adjustment, we would also be pleased to meet personally with you, your staff, or your local government leadership – whatever would be most helpful to you. Please feel free to contact us at (410) 260-3460.

Sincerely yours,



Margaret McHale
Chair

Enclosures (3)

ATTACHMENT A

SUMMARY OF ACTION ITEMS TO BE IMPLEMENTED AS OF JULY 1, 2008

200-Foot Buffer in the RCA

- Except for an exempt property or an authorized Buffer reduction, any subdivision or site plan within the RCA that is approved on or after July 1, 2008 must provide a minimum 200-foot Buffer.
- In order for a local program to authorize a reduction in Buffer width, the program must first receive Commission approval of its alternative provisions as an amendment to its local Critical Area program.

Contractor Violations

- Any Critical Area violation cited on or after July 1, 2008 that was performed by a licensed home improvement contractor, marine contractor, home builder, tree expert or other licensed professional could result in the loss of the contractor's State license.
 - Local governments can report these contractors directly to the appropriate licensing authority or request the Commission to do so.
 - If your local program chooses to make its own direct report, please be sure to copy the Commission regarding that report.
- Note that shore erosion control projects are now considered a type of "home improvement". Therefore, contractors that perform this type of work are included in State licensing requirements.

Definitions

As of July 1, 2008, the definitions of the following terms must be used in the implementation of local programs. In due course, these definitions must likewise be officially incorporated into local program ordinances:

- Intensely Developed Area (IDA)
- Legally developed
- Limited Development Area (LDA)
- Lot coverage
- Property owner
- Resource Conservation Area (RCA)
- Tributary stream

Enforcement

HB 1253 establishes an administrative enforcement procedure that must be a part of each local program. As of July 1, 2008, every violation identified by a local government requires an enforcement action, which shall include an appropriate penalty, site restoration, and mitigation.

- A variance may not be granted until after all these requirements have been satisfied. (See Variance Provisions and Attachment C.)
- Model language concerning administrative enforcement procedures will be provided to local governments as soon as it is completed.

Growth Allocation

- What were previously guidelines to be considered in the growth allocation process are now, under the new law, standards to be met.
- In addition, the Commission is now required to consider a number of listed factors.
- If you anticipate processing a growth allocation in your local jurisdiction, we recommend that you contact the Commission office as soon as possible for further assistance with these legal changes.

Lot Consolidation and Reconfiguration

- By January 1, 2009, lot consolidation and reconfiguration procedures for bringing grandfathered lots into conformance must be sent to the Commission.
- For now, until local procedures have been approved by the Commission, a local jurisdiction must provide documentation of the grandfathered status of the lots and demonstrate how the proposed consolidation or reconfiguration has been brought into conformance with the Critical Area Program to the extent possible.

Lot Coverage

- Except for a pipeline project that qualifies for an exemption, the law now requires local governments to use lot coverage (see definitions) instead of impervious surface as the development standard in the LDA and RCA.
 - The existing percentages remain at 15% for grandfathered lots greater than ½ acre and 25% for grandfathered lots that are ½ acre or less.
- By October 1, 2010 local governments must submit to the Commission a list of pipeline projects exempted because their lot coverage plans were locally approved by July 1, 2010.
- Note that these lot coverage provisions do not affect stormwater credits that the MDE provides for various practices.

- As implementation progresses regarding the lot coverage aspect of HB 1253, the Commission will provide further guidance on lot coverage plans and other aspects of these pipeline provisions.

Mapping

- The remapping of the 1,000-foot Critical Area boundary line will take place at different times for each local government.
 - A pilot project is currently underway, as mandated by the law, and will be completed in the autumn of 2008.
- Once procedures and joint regulations (by DNR, MDE, and the Commission) are initiated, the State will provide updated Critical Area maps to each jurisdiction.
- Each local jurisdiction will have 24 months from receipt of the maps from DNR to complete its local processes of adoption and formal program amendment, but note that the Commission can authorize extensions as appropriate.

Notice and Timing Provisions

- By January 1, 2009, procedures for providing notice to the Commission on project approvals and project denials must be sent to the Commission.
- Instead of one business day for the Commission to send written notice of receipt of a project application, the Commission now has five business days to do so.
- Instead of requiring the Commission to act on a proposed program amendment within 90 days of its acceptance of the proposal, the Commission now has 130 days.
- The Commission must receive a copy of each written variance decision within 10 business days after the decision is issued.
- A permit may not be issued for an approved variance until the 30-day appeal period has elapsed.

Shore Erosion Control

- Under the new law, nonstructural shore erosion control measures will be required except where an applicant can demonstrate that these measures would be infeasible.
- MDE will continue to review and process these permit applications.
 - MDE is required to develop regulations that address the provisions of the new law and plans to do so during the coming fall.

Variance Provisions

- Before a local jurisdiction may accept an application for a variance to legalize a Critical Area violation, the local jurisdiction must first issue a notice of violation,

including assessment of a penalty. (See, Enforcement for further information.)

- In determining whether or not to grant a variance, a local jurisdiction must now consider any conditions or circumstances that resulted from the applicant's own actions.
- A local jurisdiction may not issue a variance regarding a Critical Area violation unless the applicant has paid all costs and penalties assessed, prepared a mitigation plan that has been locally approved, and accomplished the abatement measures spelled out in the plan.
- Regarding an application for an "after-the-fact" variance, the local jurisdiction:
 - Must deny the variance if the "after-the-fact" activity or structure does not meet each of the variance criteria, including unwarranted hardship, and the local jurisdiction must likewise order removal or relocation of any structure as well as restoration of the affected resources; or
 - May approve the variance if the activity or structure does meet each of the variance criteria for unwarranted hardship.
- Within 10 working days after the issuance of written variance decision, the Commission must receive a copy of that decision.
- With the approval of the Commission, a local jurisdiction may establish its own procedures for the processing of an administrative variance.

ATTACHMENT B

COMPREHENSIVE EXPLANATION OF HB 1253

Introduction

Notwithstanding any provision of a local law or ordinance, or the lack of a provision in a local law or ordinance, as of July 1, 2008, all requirements of the Critical Area statute apply to, and must be applied by, a local jurisdiction as minimum standards in the administration and enforcement of its local program.

(P. 19, lines 19-24)

200-Foot Buffer in the RCA

- Except for an exempt property or an authorized Buffer reduction, any subdivision or site plan within the RCA that remains RCA and is approved on or after July 1, 2008 must provide a minimum 200-foot Buffer.
- If a subdivision application or site plan approval is submitted before July 1, 2008 and legally recorded by July 1, 2010, the property is exempt from this rule.
- A reduction in Buffer size is authorized if the strict application of the 200-foot requirement would preclude the subdivision from occurring at a density of one dwelling unit per 20 acres or if it would preclude an intra-family transfer. For example, the size or shape of a lot could preclude a 200-foot Buffer; also, locating a residence back 200 feet, but in or near wetlands, to accommodate the 200-foot Buffer would not be appropriate.
- A local program may authorize reductions only in accordance with local program procedures that have first been reviewed and approved by the Commission.
- Note: Use of the term "site plan" varies according to jurisdiction.
 - In this context, the minimum 200-foot Buffer is required for any "site plan" that changes the allowed use of a property, such as a commercial use in the RCA that has been identified in a local program as not requiring Growth Allocation.
 - Some local jurisdictions require a "site plan" instead of, or in addition to, a building permit for residential development allowed in the RCA. This type of "site plan" is not meant to require a 200-foot Buffer. A jurisdiction that uses the term "site plan" in this manner should contact the Commission.
 - If a local jurisdiction opts to include Buffer reductions in its program, the use of the term "site plan" and its application must be clearly stated in its alternative provisions.

(P. 35, lines 23-31 - P. 36, lines 1-17)

Contractor Violations

- Any Critical Area violation cited on or after July 1, 2008 that was performed by a licensed home improvement contractor, marine contractor, home builder, tree expert or other licensed professional could result in the loss of the professional's State license (issued, depending on the type of license, by the Maryland Home Improvement Commission, the Home Builder Registration Unit, or DNR).
 - Local governments can report these contractors directly to the appropriate licensing authority or request the Critical Area Commission to do so.
 - If your local program chooses to make its own direct report, please be sure to copy the Commission regarding that report.
- Please note that piers and shore erosion control projects are now considered a type of "home improvement". Therefore, contractors that perform this type of work are included in State licensing requirements.
 - However, it is the understanding of the Critical Area Commission that the Maryland Home Improvement Commission will offer an informal grace period to currently unlicensed marine contractors pending the establishment of licensing procedures and requirements.
 - Likewise, it is the Critical Area Commission's understanding that MDE will operate under an informal grace period in the issuance of residential shore erosion control project permits before it requires proof of a contractor's license or license application.
 - At this time, the Critical Area Commission does not recommend the issuance of a stop-work order for a project if the stop-work order is based solely on the marine contractor's lack of a professional license and the project is otherwise duly permitted.

(Pages 5-9)

Definitions

House Bill 1253 includes the following definitions, all of which must be added to each local program.

- "Intensely Developed Area" means an area of at least 20 acres or the entire upland portion of the Critical area within a municipal corporation, whichever is less, where:
 - Residential, commercial, institutional, or industrial developed land uses predominate; and
 - A relatively small amount of natural habitat occurs.
- "Intensely Developed Area" includes:
 - An area with a housing density of at least four dwelling units per acre;
 - An area with public water and sewer systems with a housing density of more than three dwelling units per acre; or

- A commercial marina redesignated by a local jurisdiction from a resource conservation area or limited development area to an intensely developed area through a mapping correction that occurred before January 1, 2006.

(P. 12, lines 2-28)

- “Legally developed” means that all physical improvements to a property:
 - Existed before Commission approval of a local program; or
 - Were properly permitted in accordance with the local program and impervious surface polices in effect at the time of construction.

(P. 34, lines 6-12)

Note that the definition for “legally developed” comes up in the context of changes from “impervious surface” to “lot coverage”.

- “Limited Development Area” means an area:
 - That is developed in low or moderate intensity uses and contains areas of natural plant and animal habitat; and
 - Where the quality of runoff has not been substantially altered or impaired.

(P. 12, lines 29-31)

“Limited Development Area” includes an area:

- With a housing density ranging from one dwelling unit per five acres up to four dwelling units per acre;
- With a public water or sewer system;
- That is not dominated by agricultural land, wetland, forests, barren land, surface water, or open space; or
- That is less than 20 acres and otherwise qualifies as an Intensely Developed Area.

(P. 13, lines 1-7)

- “Lot coverage” means the percentage of a total lot or parcel that is:
 - Occupied by a structure, accessory structure, parking area, driveway, walkway, or roadway; or
 - Covered with gravel, stone, shell, impermeable decking, a paver, permeable pavement, or any manmade material.

“Lot coverage” includes the ground area covered or occupied by a stairway or impermeable deck.

“Lot coverage” does not include:

- A fence or wall that is less than 1 foot in width that has not been constructed with a footer;
- A walkway in the Buffer or expanded Buffer, including a stairway, that provides direct access to a community or private pier;
- A wood mulch pathway; or
- A deck with gaps to allow water to pass freely.

(P. 13, lines 12-31)

- “Property owner” includes two or more persons holding title to the property under any form of joint ownership. (p. 23, lines 27-29)

Note that the definition for “property owner” comes up in the context of enforcement.

- “Resource Conservation Area” means an area that is characterized by:
 - Nature dominated environments, such as wetlands, surface water, forests, and open space; and
 - Resource-based activities, such as agriculture, forestry, fisheries, or aquaculture.

(P. 15, lines 5-10)

- “Resource Conservation Area” includes an area with a housing density of less than one dwelling per five acres. (P. 15, lines 11-12)
- “Tributary stream” means a perennial stream or an intermittent stream within the Critical Area that has been identified by site inspection or in accordance with local program procedures approved by the Commission. (P. 15, lines 13-16)

Enforcement

Enforcement of Critical Area requirements was a major focus of the bill. Certain provisions must be implemented immediately (see also, Attachment C), while others cannot be implemented fully until the Commission is able to review proposed changes to local ordinances.

The provisions of HB 1253 that must be implemented locally as of July 1, 2008 include the following changes:

- A local authority that identifies a violation of the Critical Area law or of the local program must take enforcement action.
 - A development activity commenced without a required permit, approval, variance, or special exception is a violation of the Critical Area law. (P. 25, lines 26-28)
- Administrative enforcement procedures must be established in accordance with due process principles, including notice and an opportunity to be heard, and at a minimum: (P. 22, lines 18-21)

- Each violation of the Critical Area law or of a regulation, rule, order, Program, or other requirement of the Critical Area Program is a separate offense; (P. 22, lines 22-25)
- Each calendar day that a violation continues is a separate offense; (P. 22, lines 26-27)
- For each offense, a person is subject to separate fines, orders, sanctions and other penalties; (P. 22, lines 28-29)
- Civil penalties for continuing violations shall accrue without a requirement for an additional assessment, notice, or opportunity for hearing for each separate offense; (P. 22, lines 18-34)
- On consideration of all minimum Critical Area standards and any other factors in the local jurisdiction's approved program, the local jurisdiction shall impose the amount of the penalty; (P. 22, lines 33-34 - P. 23, lines 1-3)
- In order to determine the amount of an appropriate penalty, before HB 1253 a local jurisdiction could consider the gravity of the violation, any willfulness or negligence involved in the violation, and the environmental impact of the violation. Now, a local jurisdiction is required to consider those three factors; in addition, a fourth factor must be considered – that is, the cost of restoration of the resource affected by the violation and mitigation for damage to that resource, including the cost to the State or local authorities for performing, supervising, or rendering assistance to the restoration and mitigation. (P.23, lines 15-26)
- Given the facts and circumstances of each violation, the local authority shall require:
 - Payment of an appropriate penalty (as determined above); and
 - Site restoration and mitigation as necessary to offset adverse impacts to the Critical Area resulting from the violation.
- In addition to any other penalty applicable under State or local law, each person who violates a provision of the Critical Area statute, regulation, or local program, including a contractor, property owner, or any other person who committed, assisted, authorized, or participated in the violation, is subject to a fine up to \$10,000 per violation; (P. 22, lines 9-14)
- For restoration or mitigation that exceeds 1,000 square feet or involves expenses exceeding \$1,000, the local authority shall collect a bond or other financial security or adopt appropriate procedures to ensure that the restoration or mitigation is properly completed;
 - If the restoration or mitigation involves planting, the bond shall be held for at least two years after the date the plantings were installed to ensure plant survival; and
 - On request of the property owner, the local authority shall schedule inspections as necessary to ensure compliance and the return of the bond or other financial security;
 (P. 38, lines 35-35 – P. 39, lines 1-9)
- If a violation is contested and the final adjudication of the notice of violation results in a determination that a violation has occurred, the person shall be liable for a penalty that is twice the amount of the assessment in the notice of violation, in

addition to the cost of the hearing and any applicable restoration or mitigation costs; and (P. 26, lines 15-19)

- A permit, approval, variance, or special exception for a property may not be issued until all conditions have been fully satisfied for the affected property, including full payment of penalties, full performance of all site restoration requirements, and full performance of all mitigation requirements. (P. 24, lines 1-11)
- Note that the bill provides for the Commission's consideration and approval of a local jurisdiction's submission of alternative administrative enforcement provisions that are at least as effective as those stated above. (P. 23, lines 30-35)
- In addition to the administrative penalties above, a person who violates a provision of the Critical Area statute, regulations, or a Critical Area order, permit, plan, or local program, is:
 - Subject to prosecution or suit in circuit court or district court by either the Chair of the Critical Area Commission or the local program authority;
 - Guilty of a misdemeanor; and
 - On conviction, subject to a fine up to \$10,000 or imprisonment not exceeding 90 days or both, with costs imposed in the discretion of the court.(P. 39, lines 10-22)
- Note that criminal prosecution or a suit for a civil penalty must be instituted within three years after the Commission or the local authority in fact knew or reasonably should have known of the violation. (P. 39, lines 23-28)
- If a person cuts or clears or plans to cut or clear trees within the Critical Area in violation of Critical Area regulations or an approved local program, the Chair may now bring an action, independent of the authority of the local program to do so, in order to restrain the violation, require replanting, or collect damages, whichever may be appropriate. (P. 40, lines 2-16)
- Except as otherwise authorized in a local jurisdiction, a local authority may obtain access to and enter a property in order to identify or verify a suspected violation, restrain a development activity, or issue a citation if the local authority has probable cause to believe that a Critical Area violation has occurred, is occurring, or will occur.
 - A local authority must make a reasonable effort to contact a property owner before obtaining access to or entering the property.
 - If entry is denied, the local authority may seek an injunction to enter the property to pursue an enforcement action.(P. 38, lines 13-28)

Growth Allocation

- The following changes are effective as of the first formal meeting of the Critical Area Commission occurring after the effective date of the Act – that is, for every growth allocation determination made by the Commission on July 9, 2008 and thereafter. (P. 45,

lines 33-35 – P. 46, lines 1-3 and 8-9)

- Before HB 1253, the term “guidelines,” meaning general principles, was used when referring to the criteria for locating new intensely developed areas and limited development areas. Now as of July 1, 2008, those guidelines have become “standards,” measures that must be addressed when processing a growth allocation request. (P. 28, lines 1-37 – P. 29, lines 1-7)
- Furthermore, the Critical Area Commission is required to consider the following factors, and thus each local program is likewise advised to present its consideration and analysis of these factors:
 - Consistency with the locally adopted Comprehensive Plan;
 - In IDAs, whether the development:
 - Is served by a public wastewater system;
 - Has an average density of at least 3.5 dwelling units per acre;
 - Is located in a Priority Funding Area, if the growth allocation is greater than 20 acres; and
 - Has demonstrable economic benefit to the area;
 - In LDAs, whether the development:
 - Is served by a public wastewater or a septic system that uses the Best Available Nitrogen Removal Technology;
 - Completes an existing subdivision;
 - Is an expansion of an existing business; or
 - Is clustered;
 - Use of existing public infrastructure where practical;
 - Consistency with State and regional environmental protection policies regarding the protection of threatened and endangered species and species in need of conservation;
 - Impacts on a priority preservation area;
 - Environmental impacts associated with wastewater and stormwater practices and discharges; and
 - Environmental impacts associated with location in a coastal hazard area or increased flooding attributable to the proposed development.

(P. 29, lines 8-32 – P. 30, lines 1-30)
- Note that the standard requiring new IDA or LDA to be set back at least 300 feet from the edge of tidal waters must also be part of a local program, unless the jurisdiction has proposed alternative measures and these measures provide greater water quality and habitat benefits. (P. 28 lines 11-16)
 - These alternative measures must be approved by the Commission. Therefore, if a growth allocation is pending in your jurisdiction, please be aware of these changes and the new option to submit alternative measures to the 300-foot setback.
 - Also, the adjacency standards must be met unless alternative measures are approved by the Commission.

(P. 29, lines 1-7)

Lot Consolidation and Reconfiguration

Local programs must include procedures to bring grandfathered lots into conformance with Critical Area Program goals and criteria to the extent possible. These procedures must be submitted to the Commission by January 1, 2009 for its review and approval.

- For now, in order for a local program to approve a consolidation or reconfiguration of grandfathered lots or parcels, including an administrative subdivision, the local application submitted under COMAR 27.03.01.02 must:
 - Document that the individual tracts of land shown on the proposed subdivision application are grandfathered under applicable provisions of the Critical Area law and criteria, as well as the local jurisdiction's Critical Area ordinance; and
 - Demonstrate that the proposed consolidation or reconfiguration has been brought into conformance with the Critical Area Program to the extent possible, at a minimum showing how the project will result in a net reduction of water quality and habitat impacts, including but not limited to the reduction of impervious surfaces and reduced impacts on Habitat Protection Areas.
- In due course, a local program must:
 - Amend its local ordinance to include consolidation or reconfiguration procedures required to bring those lands into Program conformance to the extent possible; and
 - Receive Commission approval of these procedures as a formal amendment to the local Critical Area program.

(P. 21, lines 21-34 - P. 22, lines 1-4 - P. 45, lines 27-32)

Lot Coverage

- The "impervious surface" provisions in each local program must now change to "lot coverage" provisions. This change applies to development activities that occur in the LDA or RCA, not the IDA.
- This change does not affect MDE-issued stormwater credits. (P. 31, lines 29-31)
- A project that is fairly far along in the pipeline may be exempt from the new lot coverage requirements if:
 - A building permit was issued before July 1, 2008; and
 - Before July 1, 2009, construction is begun and an inspection is performed.(P. 34, lines 17-24)
- A project earlier on in the pipeline may be exempt from the new lot coverage requirements if:
 - One of the following sets of events occurs:
 - An application for a building or grading permit is filed by October 1, 2008, and the permit is issued by January 1, 2010; or

- An initial application for development is filed by October 1, 2008, and the local government approves the development plan by July 1, 2010; and
- All of the following conditions are satisfied:
 - A lot coverage plan that shows the amounts of impervious and partially pervious areas must be approved locally by July 1, 2010;
 - The development plan must remain valid, as per local procedures (but note that, for purposes of lot coverage, a local moratorium or an APFO cannot terminate an approved development plan); and
 - If a development plan is changed, the change must be in accordance with local procedures, and the change must result in the same or a lesser amount of impervious or partially pervious surface. (A changed plan is no longer exempt if it increases the amount of impervious or partially pervious surface area.)

(P. 46, lines 11-33 - P. 47, lines 4-13)

- By October 1, 2010, each local government must submit to the Commission a list of the projects exempted from lot coverage requirements because a lot coverage plan was locally approved by July 1, 2010 (above). (P. 47, lines 1-3)
- A lot or parcel legally developed as of July 1, 2008 may be considered legally nonconforming for the purpose of lot coverage requirements. (P. 34, lines 13-16)
- Lot coverage in the Buffer may not exceed the minimum amount necessary for water-dependent facilities, except:
 - As provided in a mapped Buffer Exemption Area;
 - By variance; or
 - As provided in a waterfront revitalization area or a waterfront industrial area under a local program.

(P. 32, lines 1-10)

- A drafting checklist for lot coverage:
 - As a general rule, in the local program sections that reference 15% "impervious surface" of a lot or parcel, substitute "lot coverage".
 - In the sections on grandfathered lots that are ½ acre or less, as well as those greater than ½ acre and less than one acre, substitute "lot coverage" for "man-made impervious surfaces".
 - Also change this clustering provision to lot coverage: "A local jurisdiction may allow individual lots less than 1 acre in a new subdivision to exceed 15% lot cover, if the overall subdivision does not exceed 15%."
 - If your local program includes provisions for additional dwelling units in the RCA, substitute "lot coverage" for "impervious surface".
 - Substitute "lot coverage" for "impervious surface" if the local program has opted to permit a property owner to exceed the lot coverage limitations (when certain limited conditions exist).

(throughout Pages 31-34)

Mapping

- As you know, since the inception of the Critical Area Program in 1984, it was required that the 1,000-foot Critical Area boundary line be established by using the 1972 State Tidal Wetlands maps. These maps have many inaccuracies. Now, using modern satellite technologies, the State will adopt, as part of the Statewide Base Map, an accurate 1,000-foot Critical Area boundary; these maps will be shared with affected local governments. There are currently two pilot counties, Baltimore County and Talbot County, that are in the process of updating their 1,000-foot Critical Area line with an expected completion date in autumn 2008.
- Once procedures are in place, necessary regulations have been developed, and the new maps are ready for distribution, Commission staff will provide further assistance to ensure that each jurisdiction is able to adopt new maps reflecting an accurate Critical Area boundary and then proceed accordingly to implement its local program in any newly included areas.
 - Each local jurisdiction will have 24 months from receipt of the maps from the Department of Natural Resources to complete its local processes of adoption and formal program amendment, but note that the Commission can authorize extensions as appropriate.

(Pages 40-45)

Notice and Timing Provisions

- In addition to existing requirements under COMAR 27.03.01 regarding project notification, HB 1253 now requires a local Critical Area program to include written provisions, to be approved by the Critical Area Commission, for notifying the Commission of project approvals and denials. (P. 20, lines 19-22)
 - Local governments must submit their local procedures used for project approvals and denials to the Commission by January 1, 2009. (P. 45, lines 27-32)
- Instead of one business day for the Commission to send written notice of receipt of a project application, the Commission now has five business days to do so. (P. 38, lines 7-10)
- Instead of requiring the Commission to act on a proposed program amendment within 90 days of its acceptance of the proposal, the Commission now has 130 days. In other words, if 131 days or more go by without Commission action, the proposed program amendment is deemed approved. (P. 37, lines 31-35)
- The Commission must receive a copy of each written variance decision within 10 business days after the decision is issued. (P. 25, lines 19-22)
- A permit may not be issued for an approved variance until the 30-day appeal period has elapsed. (P. 25, lines 23-25)

Shore Erosion Control

- MDE will remain the coordinator of State approvals for shore erosion control permits.
- The new law requires MDE to develop regulations requiring applicants to install nonstructural shoreline stabilization measures, such as marsh creation, except where the applicant can demonstrate that these measures are not feasible.
- For now, local officials are advised to wait for MDE approval before issuing any necessary local approval for shore erosion control.

(P. 36, lines 19-32 – P. 37, lines 1-5)

Variance Provisions

- A local jurisdiction may not accept an application for a permit, approval, variance, or special exception to legalize a Critical Area violation, including an unpermitted structure or development activity, unless the local jurisdiction first issues a notice of violation, including assessment of a penalty, for the violation. (See the discussion under Enforcement for further detail in this regard.) (P. 24, lines 1-11)
 - A property owner's application for a permit, approval, variance, or special exception constitutes a waiver of the right to appeal the terms of a notice of violation and its final adjudication, including the payment of any penalties and costs assessed. (P. 26, lines 20-23)
- It used to be that if a variance request were based on conditions or circumstances that resulted from the applicant's own actions, the local jurisdiction could consider that fact or not in its determination of whether to grant the variance. Now, the local jurisdiction must consider that fact. (P. 24, lines 26-29)
- If an applicant's property has an outstanding Critical Area violation, a local jurisdiction may not issue a permit, approval, variance, or special exception for that property unless the applicant has:
 - Fully paid all administrative, civil and criminal penalties that are imposed for that violation;
 - Prepared a restoration or mitigation plan, approved by the local jurisdiction, to abate impacts to water quality or natural resources as a result of the violation; and
 - Performed the abatement measures in the approved plan in accordance with the local Critical Area program.
 (P. 24, lines 1-11)
- If a local jurisdiction finds that the activity or structure for which a variance is requested was commenced without permits or approvals – that is, it is an “after-the-fact” type of violation -- and:
 - If the activity or structure does not meet each of the variance criteria, including unwarranted hardship, the local jurisdiction shall deny the requested variance and order removal or relocation of any structure and restoration of the affected resources; or
 - If the activity or structure does meet each of the variance criteria, including unwarranted hardship, the local jurisdiction may approve the requested variance.

(P. 26, lines 24-33)

- Within 10 working days after a written decision regarding a variance application is issued, the Commission shall receive a copy of the decision from the local jurisdiction.
 - If a variance is granted, the local jurisdiction may not issue a permit for the activity that was the subject of the variance application until the applicable 30-day appeal period has elapsed. (P. 25, lines 19-25)
 - Unless an extension of time is appropriate because of adverse planting conditions, within 90 days of the issuance of a permit, approval, variance, or special exception, any additional mitigation required as a condition of approval for the permit, approval, variance, or special exception shall be completed. (P. 23, lines 9-14)
- With the approval of the Commission, a local jurisdiction may establish its own procedures for the processing of an administrative variance. (P. 19, lines 25-27)

DOUGLAS F. GANSLER
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ATTACHMENT C

July 2, 2008

Board of Zoning Appeals
P O Box 773
Perryville, Maryland 21903

RE: Notice of Important Changes to Law re: Critical Area Variances

Dear Board Chair:

This letter advises you of important changes to the law governing your authority to grant "after-the fact" variances to the Critical Area program. Effective July 1, 2008, Chapter 119 of the 2008 Laws of Maryland prohibits a local government from issuing a variance, permit, or special exception to legalize a development activity conducted in violation of the Critical Area law, unless certain conditions precedent have been fully met. **Accordingly, no "after the fact" Critical Area variance may be issued by a local government from this day forward, unless full compliance with Chapter 119 has been achieved.** See *Layton v. Howard County Board of Appeals*, 399 Md. 36 (2007), where the Court of Appeals held that in land use and zoning cases, the case is governed by "the law as it exists at the time the case is before us."

Chapter 119 of the 2008 Laws of Maryland applies directly to, and must be applied by, all local jurisdictions, including zoning boards, regardless of whether local ordinances, codes, or practices have been amended. Effective July 1, 2008, the law prohibits the Board from granting any Critical Area variance, permit, or special exception for an "after-the fact" development project without proof that the applicant has fully paid all fines and performed all mitigation required for the violation. For your information and assistance, this Office has prepared the following summary of the provisions of Chapter 119 relevant to variances.

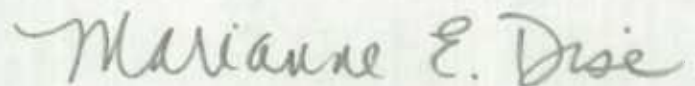
- A development activity commenced without a required permit, approval, special exception, or variance is a violation of Code, Natural Resources Article Title 8 subtitle 18 ("Critical Area law"). Ch. 119, 2008 Laws at 750.

- Notwithstanding any provision in a local law or ordinance, or the lack of a provision in a local law or ordinance, all of the requirements of this subtitle (Title 8 Subtitle 18) shall apply to, and be applied by, a local jurisdiction as minimum standards for its Critical Area Program. Ch. 119, 2008 Laws at 743.
- Each violation of the Critical Area law constitutes a separate violation, and each calendar day is a separate offense. Ch. 119, 2008 Laws at 747.
- A local jurisdiction may not accept an application for a variance to legalize a violation, including an unpermitted structure or development activity, unless the jurisdiction has first issued a notice of violation, including assessment of a penalty. Ch. 119, 2008 Laws at 750.
- A local jurisdiction may not grant a variance for an unpermitted development activity unless the person seeking the variance has fully paid all penalties imposed by the local government; has prepared (and the local jurisdiction has approved) a mitigation or restoration plan; and has performed the mitigation required for the violation. Ch. 119, 2008 Laws at 748.
- Satisfaction of all fines and penalties, and performance of mitigation "shall be a condition precedent to the issuance of any permit, approval, variance, or special exception for the affected property." Ch. 119, 2008 Laws at 747.

As of July 1, 2008, the prohibition on granting an "after the fact" variance without full satisfaction of the conditions precedent applies to all pending applications for "after the fact" variances regardless of when the application was accepted, when the hearing was held, or when the development activity occurred.

This letter is not a formal Opinion of the Attorney General, nor does this summary purport to include all provisions of the 2008 Law which may affect your practice and procedures. However, it is the view of this Office that any "after the fact" variance issued after July 1, 2008, without proof of full satisfaction of fines and mitigation for the violation, is of no legal effect.

Sincerely,



Marianne E. Dise
Assistant Attorney General
Principal Counsel

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor



Margaret G. McHale
Chair

Ren Serey
Executive Director

**STATE OF MARYLAND
CRITICAL AREA COMMISSION
CHESAPEAKE AND ATLANTIC COASTAL BAYS**

1804 West Street, Suite 100, Annapolis, Maryland 21401

(410) 260-3460 Fax: (410) 974-5338

www.dnr.state.md.us/criticalarea/

August 8, 2008

Dr. Fern Piret
Department of Planning
14741 Governor Oden Bowie Dr.
5th Floor, CAB
Upper Marlboro, MD 20772

Dear Dr. Piret:

As you are already aware, during this past legislative session, House Bill 1253, sponsored by Governor O'Malley, was passed. It became effective last month on July 1, and it requires local governments to apply its provisions even though there has not yet been sufficient time to amend local ordinances and program documents.

The bill includes several important changes that will greatly affect the way in which you, in the front lines of preserving our State's precious water and habitat resources, will implement your local Critical Area program. Given that the original Critical Area Program had been in effect for more than 20 years, providing plenty of lived experience of what was working and what was not working, it was time for a comprehensive overhaul. Many thanks to all of you who provided invaluable input over the many months of putting ideas down on paper and then moving those ideas through the process to successful legislation.

Because the changes made by House Bill 1253 are extensive, I am writing to summarize the scope of those changes and provide you with some written materials that will hopefully guide you as you move through the bill to make your local program changes. Please note that these materials are summary in nature; they are not an exhaustive list of every aspect of the legislation. We presume that you and your staff have independently spent time with the bill and formulated your own "to do" list applicable to your specific program, and we anticipate frequent conversations along the way between your office and ours. Also, these materials are prepared with the presumption that readers will already be familiar with the Critical Area Program and its requirements; therefore, commonly used program terms and abbreviations are not explained. For your further reference, page and line numbers in parentheses indicate where in the bill to locate the specific language cited. (If you would like to review the bill, it is easily accessible at: www.mlis.state.md.us. After clicking Bill Info and Status, plug in HB 1253 and submit

TTY for the Deaf

Annapolis: (410) 974-2609 D.C. Metro: (301) 586-0450

August 8, 2008
Page Two

query. Scroll down to the bottom, and under Bill Text select Chapter.)

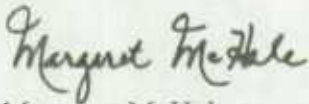
Enclosed with this letter are three attachments.

- Attachment A - An abbreviated list of the changes effective July 1, 2008
- Attachment B - A more comprehensive explanation of key components of the legislation
- Attachment C - A sample letter (July 2, 2008) from Marianne Dise, Principal Counsel to the Critical Area Commission, regarding key components of House Bill 1253 in effect as of July 1, 2008

In addition, House Bill 1253 gave the Commission the authority to adopt regulations – so as to make the Program more predictable and streamlined, while providing flexibility for local differences. The process of drafting and adopting regulations will provide ample opportunity for your comments and recommendations. In fact, I look forward to, and am counting on, your participation. Presently, Commission staff is working toward this fall when we expect to introduce our first regulatory proposal, and then other subject areas listed in the bill will follow. Likewise, for your assistance the staff is currently drafting model ordinance language for certain bill provisions, which is also anticipated in the fall.

In conclusion, I hope that the enclosed materials will help you as you move forward from the requirements of the old law to the new. The Commission staff and I, as well as the Office of the Attorney General, would be happy to assist you whenever you have any questions or need for additional information. And as we all move through this time of adjustment, we would also be pleased to meet personally with you, your staff, or your local government leadership – whatever would be most helpful to you. Please feel free to contact us at (410) 260-3460.

Sincerely yours,



Margaret McHale
Chair

cc: Ms. Susan Hubbard
Ms. Cecilia Lammers
Stephanie Pratt Anderson, Esq.

Enclosures (3)

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor



Margaret G. McHale
Chair

Ren Serey
Executive Director

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August 15, 2008

Chris McCabe
Natural Resource Administrator
Worcester County
One West Market Street, Room 1201
Snow Hill, MD 21863

**RE: Map Amendment – Peterson et al. Mapping Mistake, Route 50
Worcester County (Resolutions Number 08-7 and 08-19)**

Dear Mr. McCabe:

The purpose of this letter is to notify you that I have approved the above referenced map amendment as a refinement to the Worcester County Critical Area Program. During the August 6, 2008 meeting the Critical Area Commission concurred with the Chair's determination that the above map amendment could be reviewed as a refinement to the County Critical Area Program. The Program Subcommittee recommended that I approve the change to the Program as submitted, and this letter confirms my approval.

Under provisions of the Critical Area law, the change must be officially incorporated into the Atlantic Coastal Bays Critical Area Program by updating the map within 120 days of the date of this letter. Please provide a copy of the updated map when it becomes available. If you have any questions, please do not hesitate to contact me at (410) 260-3460.

Sincerely,

Margaret G. McHale, Chair
Critical Area Commission

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor



Margaret G. McHale
Chair

Ren Serey
Executive Director

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August 15, 2008

Mr. Jack Willing
Department of Technical and Community Services
11916 Somerset Avenue
Princess Anne, MD 21853

Re: Somerset County Critical Area Program and Zoning Ordinance
Refinement – 2006 Legislative Changes

Dear Mr. Willing:

The purpose of this letter is to officially notify you of the Critical Area Commission's action on the above referenced Critical Area Program refinement. On August 6, 2008, the Critical Area Commission concurred with my decision that the changes to the Critical Area regulations made as a result of the 2006 state legislative session could be reviewed as a refinement to the County's Critical Area Program. The Commission recommended that I approve the changes to the Program as submitted with the two conditions listed below, and I did so at the August 6, 2008 meeting:

- 1) The County will amend Section D on page 2.9 as follows: "State law requires that, when locating new Intensely Developed or Limited Development Areas, the County shall use the following standards:"
- 2) The County will amend Section D, number 8 as follows: "Locate new Intensely Developed Areas and Limited Development Areas in a manner that minimizes their impacts to the defined land uses of the Resource Conservation Area."

Under the provisions of the Critical Area law, the new ordinance sections shall be officially incorporated into the County's Critical Area Program within 120 days of the date of this letter. Please provide a copy of the updated ordinance when it becomes available. On behalf of the Commission, I want to thank you and the Board of County Commissioners for your commitment to addressing these programmatic changes.

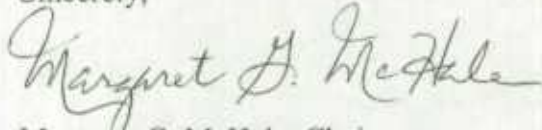
Mr. Jack Willing

8/13/2008

Page 2 of 2

If you have any questions, please do not hesitate to contact me at (410) 260-3470.

Sincerely,

A handwritten signature in cursive script, reading "Margaret G. McHale". The signature is written in dark ink and is positioned above the printed name.

Margaret G. McHale, Chair
Critical Area Commission

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor



Margaret G. McHale
Chair

Ren Serey
Executive Director

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August 15, 2008

Cheril Thomas
Town Manager
Town of St. Michaels
300 Mill Street
P.O. Box 206
St. Michaels, MD 21663

Re: Hatton's Gardens Annexation and Growth Allocation

Dear Ms. Thomas:

The purpose of this letter is to officially notify you of the Critical Area Commission's action on the above referenced annexation and growth allocation request. On August 6, 2008, the Critical Area Commission approved the Town's annexation of a 94.78-acre parcel of land from Talbot County (Tax Map 32, Parcel 7) and a map change to reflect the change in the designation of 39.56 acres of this parcel from Resource Conservation Area (RCA) to Limited Development Area (LDA). The Commission's approval included the following conditions:

1. In lieu of a 300-foot setback, the variable width Buffer, as generally shown on "Concept Plan for Growth Allocation, sheet V-2.0," will provide at least 100 feet of forested vegetation between the most landward extent of State tidal wetlands and/or private tidal wetlands, and the building envelope for each lot. In no event shall the Buffer be less than shown on "Concept Plan for Growth Allocation, sheet V-2.0."
2. The extent of State and private tidal wetlands onsite shall be field verified by the Maryland Department of the Environment (MDE).
3. Prior to the issuance of any permits or final approvals by the Town, a detailed Buffer Management Plan at an appropriate scale shall be prepared and submitted to the full Commission for review and approval. The Buffer Management Plan shall include, but is not limited to: the variable width Buffer; the extent of State tidal wetlands, private tidal wetlands, and nontidal wetlands; the Mean High Water Line and the limits of State and Private tidal wetlands and nontidal wetlands at the time of the application for a Tidal Wetlands License in 2005; access to piers; appropriate protections for waterfowl staging and concentration areas as determined and approved by the Maryland Department of

Natural Resources (DNR); all existing or proposed trails or portions of trails located within the Buffer; removal of exotic or invasive species; and a landscaping plan showing all removal of existing vegetation and proposed supplemental planting as required to establish the Buffer. In addition, the Buffer Management Plan shall include provisions for maintenance, survival, monitoring, and replanting for five years, and provisions for the collection of a bond by the Town in an adequate amount to ensure effective implementation for the full five-year period.


4. The requirement submitting a detailed Buffer Management Plan to the full Commission for review and approval prior to the issuance of any permits or final approvals by the Town, as found in Condition 3, does not apply to issuance of the grading permits to construct the Gateway Pond, State Highway Administration stormwater management facility, or St. Michaels Nature Trail.
5. The following section shall be removed from the Deed of Open Space, Buffer and Forest Conservation Easement, Article IV, Buffer Area Easement:

Enforcement By the Critical Area Commission Pertaining to the "Buffer Areas." The Critical Area Commission or its agents have, concurrent with the Town, a right of access to all Buffer Areas for the purpose of assessing compliance with and enforcing the restrictions and obligations contained herein and in the Buffer Management Plan.

6. Reference to each covenant running with the land shall be specifically noted by separate paragraph in each deed.
7. The construction methodology for the shared piers shall be developed in cooperation with Commission staff and, to the extent possible, implement end-on-end construction to minimize the limits of construction and impacts to the marsh.

Thank you for your help, hard work, and cooperation with the Critical Area Commission throughout the review of this growth allocation request. If you have any questions, feel free to contact me at (410) 260-3460.

Sincerely,



Margaret G. McHale
Chair

cc: Mary Kay Verdery, Talbot County Office of Planning and Zoning

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor



Margaret G. McHale
Chair

Ren Serey
Executive Director

STATE OF MARYLAND
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CHESAPEAKE AND ATLANTIC COASTAL BAYS

1804 West Street, Suite 100, Annapolis, Maryland 21401

(410) 260-3460 Fax: (410) 974-5338

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September 5, 2008

Gail Webb Owings
Director
Department of Planning, Housing and Zoning
Kent County Government Center
400 High Street
Chestertown, Maryland 21620

Re: Kent County Critical Area Program Text Amendment – Marine District Permitted Uses

Dear Ms. Owings:

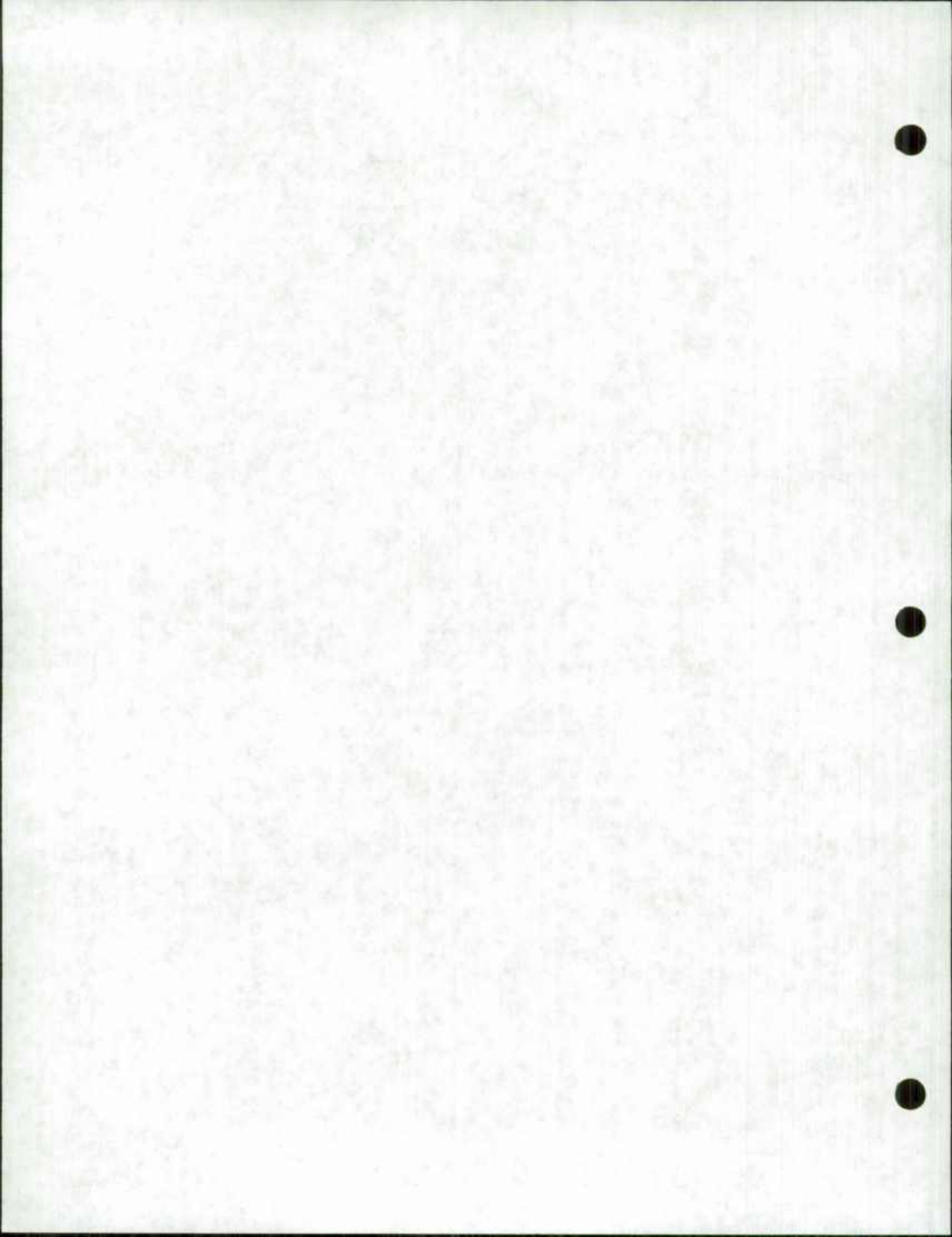
The purpose of this letter is to officially notify you of the Critical Area Commission's action on the above referenced text amendment. On September 3, 2008, the Critical Area Commission concurred with my determination that the above referenced text amendment to the Kent County Critical Area Program could be reviewed as a refinement, and I approved this change to the County Program on the same date.

This refinement must be reflected in the County's Critical Area Program within 120 days of the date of this letter. Please provide a copy of the updated ordinance to Commission staff when it is available.

Thank you for providing us with the opportunity to review your text amendment request. If you have any questions, feel free to call me at (410) 260-3460.

Sincerely,

Margaret McHale
Chair, Critical Area Commission
cc: file



Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor



Margaret G. McHale
Chair

Ren Serey
Executive Director

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September 5, 2008

Mr. Henry Burden
Town Administrator
Town of Charlestown
P.O. Box 154
Charlestown, Maryland 21914

Re: Charlestown Growth Allocation

Dear Mr. Burden:

The purpose of this letter is to officially notify you of the Critical Area Commission's action on the above referenced growth allocation request. On September 3, 2008 the Critical Area Commission concurred with my determination that the proposed growth allocation request could be reviewed as a refinement to the Town of Charlestown's Critical Area Program. The Commission supported the Town's proposal to use of 45.2 acres of growth allocation to change the Critical Area designation of sixty-six properties from Limited Development Area (LDA) to Intensely Developed Area (IDA). Subsequently, I have approved this map change.

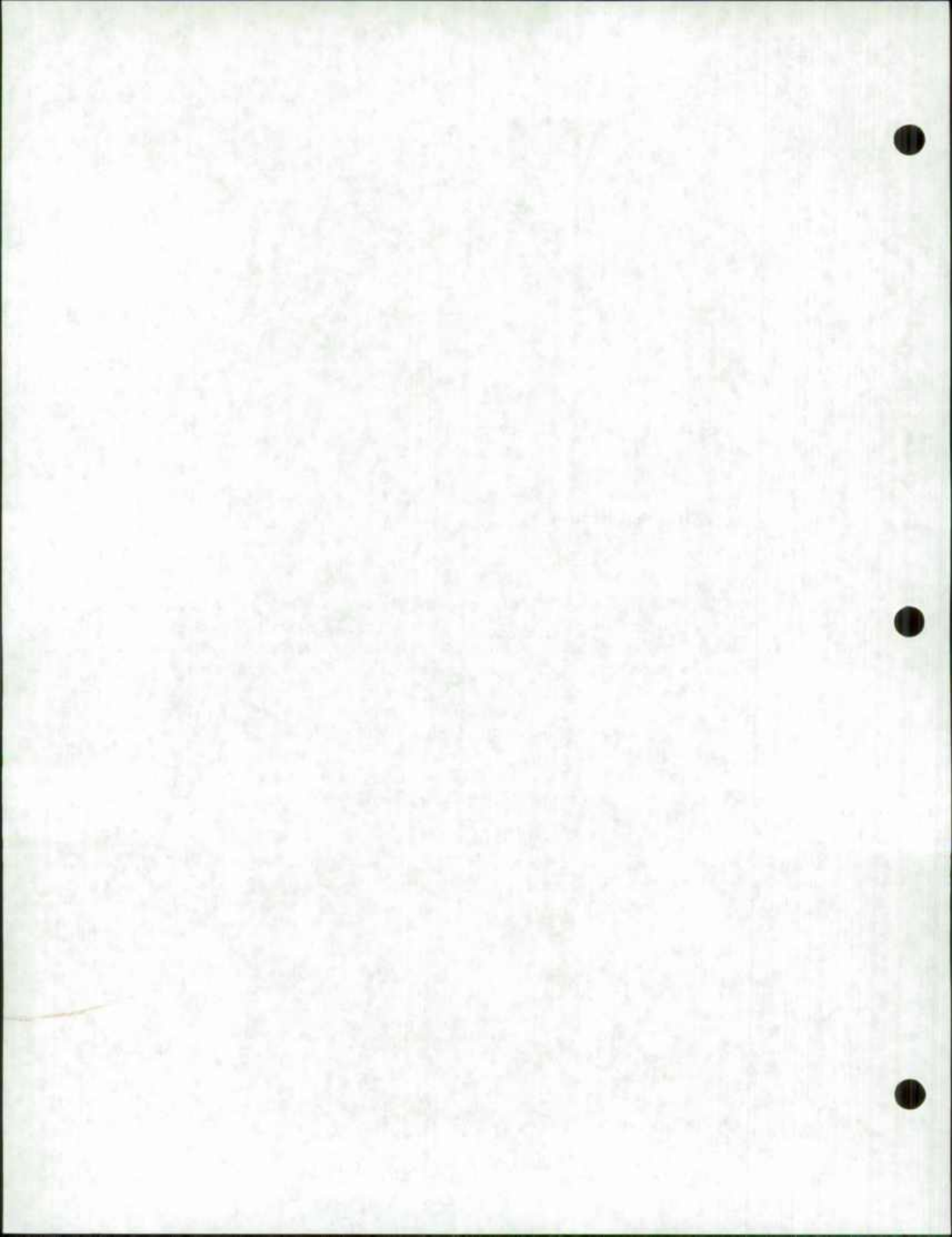
Please note that this refinement shall be reflected on the County's Critical Area Maps within 120 days of the date of this letter. In addition, please provide a copy of the revised map to the Commission when it is available.

Thank you for your help and cooperation with the Critical Area Commission throughout the review of this growth allocation request. If you have any questions, feel free to contact me at (410) 260-3460.

Sincerely,


Margaret G. McHale
Chair

cc: Mary Ann Skilling
Eric S. Sennstrom, Cecil County



Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor



Margaret G. McHale
Chair

Ren Serey
Executive Director

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September 8, 2008

Mr. Jack Willing, Director
Department of Technical and Community Services
P.O. Box 37
11916 Somerset Avenue, Room 102
Princess Anne, Maryland 21853

Re: Somerset County Critical Area Program Text Amendments
Fee-in-Lieu Provisions

Dear Mr. Willing:

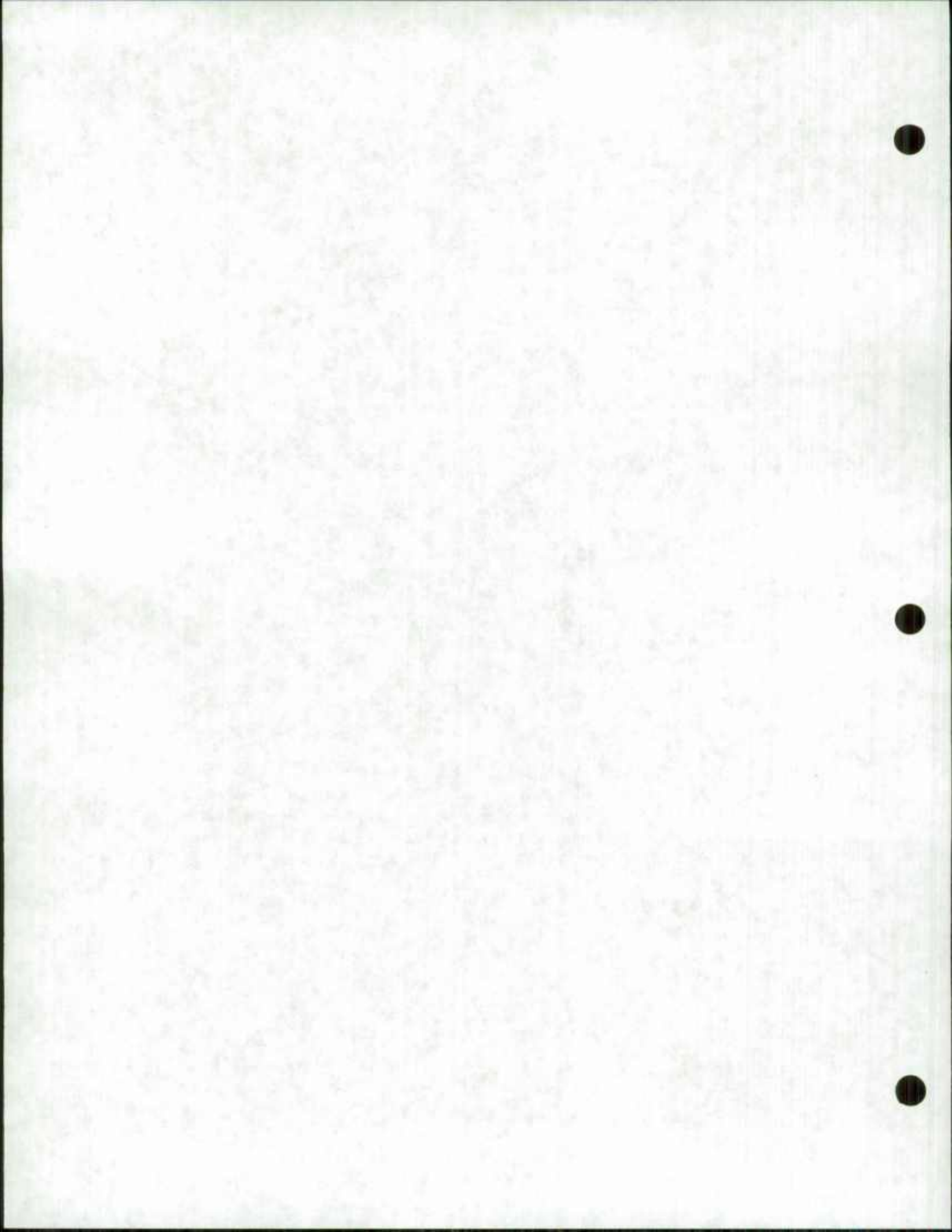
The purpose of this letter is to officially notify you of the Critical Area Commission's action on the above referenced Critical Area Program Refinement. On September 3, 2008 the Critical Area Commission concurred with my determination that the change to the Somerset County Zoning Ordinance could be reviewed as a refinement to the County's Critical Area Program. The Commission recommended that I approve the changes to the Program as submitted, and I did so at the September 3, 2008 meeting.

Under the provisions of the Critical Area law, the new ordinance sections shall be officially incorporated into the County's Critical Area Program within 120 days of the date of this letter. Please provide a copy of the updated ordinance when it becomes available. On behalf of the Commission, I want to thank you and the Board of County Commissioners for your commitment to addressing these programmatic changes.

If you have any questions, please do not hesitate to contact me at (410) 260-3470.

Sincerely,

Margaret G. McHale, Chair
Critical Area Commission



Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor



Margaret G. McHale
Chair

Ren Serey
Executive Director

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1804 West Street, Suite 100, Annapolis, Maryland 21401
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September 26, 2008

Mr. Larry Tom
Office of Planning & Zoning
2664 Riva Road
Annapolis, MD 21401

Dear Mr. Tom:

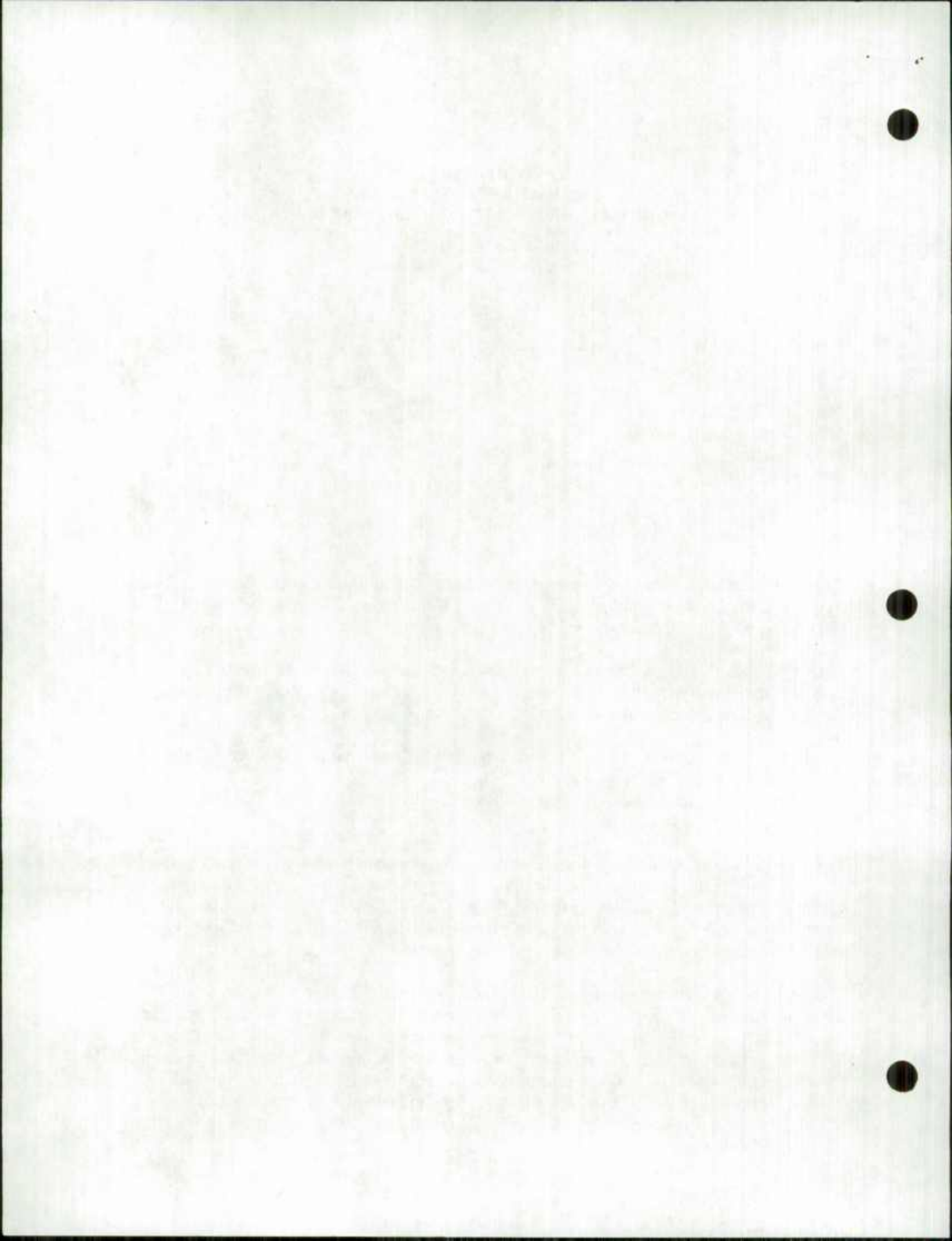
As we continue to provide local Critical Area programs with as much information and guidance as possible concerning the implementation of House Bill 1253, enclosed for your convenient reference is a document entitled Local Government Assistance Guide: Lot Coverage.

As you will see, this document provides the basic components of the new lot coverage requirements. In addition, it provides a sample lot coverage plan that relates to the following exemptions from these new requirements:

- Building or grading permits for which application is made prior to October 1, 2008 and receive final approval by January 1, 2010; and
- Initial applications for development that are filed by October 1, 2008 and receive final approval by July 1, 2010.

For projects that fall within these timeframes, a lot coverage plan is necessary in order to specify the local impervious requirements in effect prior to July 1, 2008 that will apply to these grandfathered projects. As also explained in the guidance document, lot coverage plans must be approved and maintained by the local jurisdictions; **by October 1, 2010** a list of all projects for which a lot coverage plan has been approved must be sent to the Commission.


Since impervious surface requirements varied widely among the jurisdictions prior to July 1, 2008, having a written copy of your jurisdiction's impervious surface procedures and practices that were in place before July 1 would greatly aid Commission staff in their review of these "pipeline" projects. We would appreciate your response by **October 31, 2008**. This list should include only a material for which a decision about its porosity had been made prior to July 1, 2008. Please note that House Bill 1253 allows grandfathering only for practices actually



implemented by a local program before July 1, 2008. Thus, neither Commission staff nor local program staff is authorized to make a grandfathering determination regarding a product or material that could have been considered pervious at that time but was never formally recognized as such. Knowing that everyone will continue to have questions concerning redevelopment on grandfathered lots that already exceed the allowable lot coverage limits, we will continue that discussion with various local programs in order to come to a reasonable resolution for these lots.

As always, our staff is available to field any questions or concerns you have regarding this aspect of the new law. Please let us know your questions and concerns, and we thank you for all your efforts during this transition process.

Sincerely,



Margaret McHale
Chair

Enclosure

LOCAL GOVERNMENT ASSISTANCE GUIDE

Lot Coverage

Approved September 3, 2008

Background

In the spring of 2008, House Bill 1253 amended the provisions of § 8-1808 of the Natural Resources Article of the Annotated Code of Maryland pertaining to limiting the footprint of development activity of properties designated as Limited Development Area (LDA) and Resource Conservation Area (RCA) within the Critical Area. The amendment involved primarily a change in terminology from “impervious surface” to “lot coverage.” The effect of this change was to include all developed areas of a property that are not vegetated or in a naturally permeable state as part of lot coverage limitations set forth in the law.

The purpose of this amendment was to focus on limiting the “footprint of development activity” by providing a clear and inclusive definition that could be applied consistently and uniformly throughout the Critical Area.

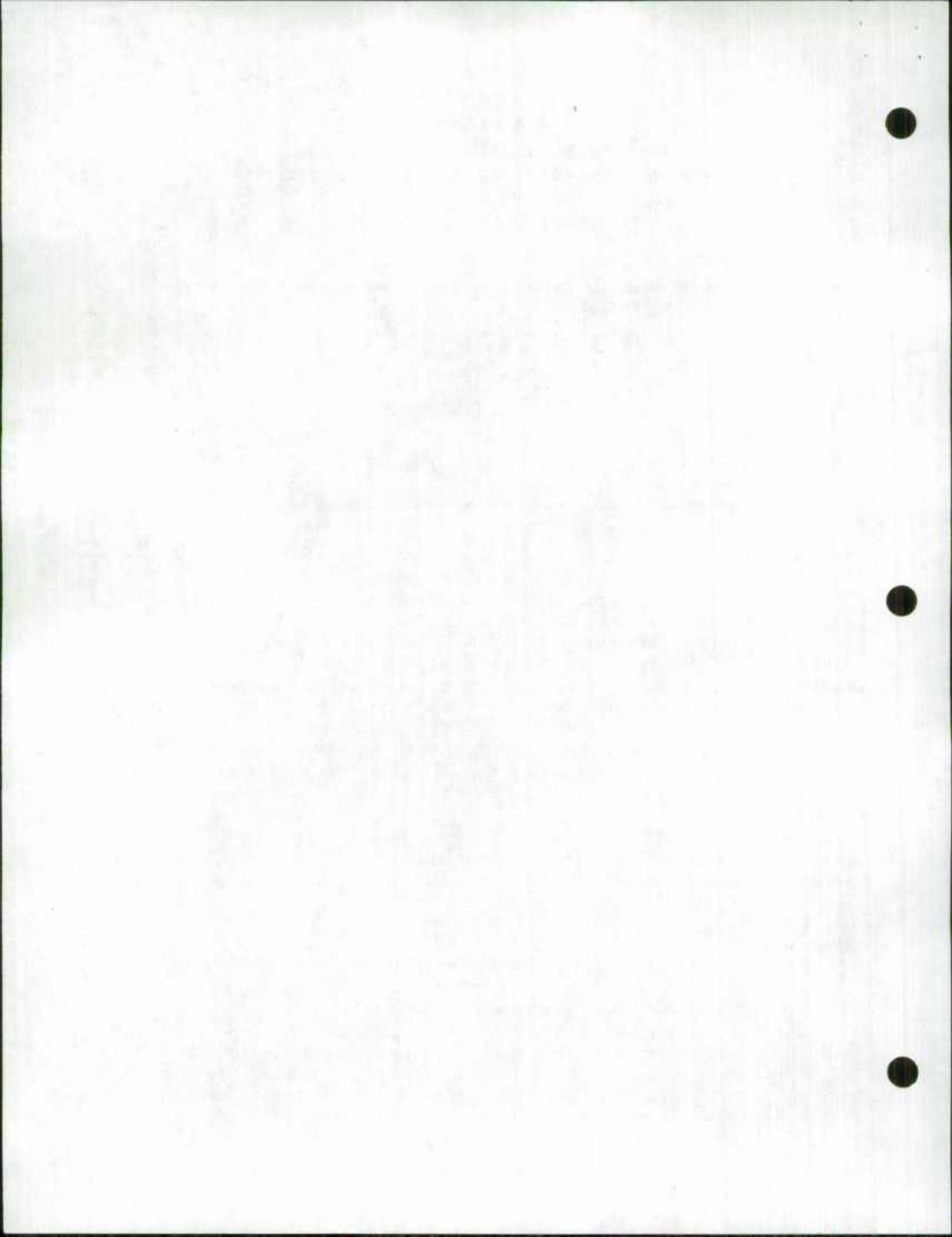
This document summarizes current law regarding limitations on lot coverage within LDAs and RCAs in the Critical Area. Pending the development and approval of regulations, it is intended as interim guidance to local governments and applicants for development activity regarding the implementation of the lot coverage provisions.

Definition

The Critical Area Law now includes a definition of lot coverage that reads as follows:

“Lot Coverage” means the percentage of a total lot or parcel that is:

1. Occupied by a structure, accessory structure, parking area, driveway, walkway, or roadway; or
2. Covered with gravel, stone, shell, impermeable decking, a paver, permeable pavement, or any manmade material.



Lot coverage does not include:

1. A fence or wall that is less than one foot in width that has not been constructed with a footer;
2. A walkway in the Buffer or expanded Buffer, including a stairway, that provides direct access to a community or private pier (local governments shall ensure that impacts to the Buffer associated with access are minimized);
3. A wood mulch pathway; or
4. A deck with gaps to allow water to pass freely.

NOTE: (In response to numerous inquiries from local jurisdictions, the following is meant for clarification purposes:

Impermeable decks - Lot coverage includes the ground area covered or occupied by an impermeable deck, even when that deck is not directly touching the ground surface.

Stairways - Lot coverage does not include walkways or stairways in the Buffer that provide direct access to a community or private pier. All other stairs or walkways count.

Stormwater management and erosion control measures - Lot coverage does not include these practices when they are approved only for the specific purpose of performing stormwater management or erosion control.)

Lot Coverage Limits

In general, the limits of development remain the same except for a change that will facilitate clustering where small lots may be created and developed in order to promote the conservation of larger areas of the project site. For new subdivisions, lot coverage within the subdivision as a whole is still limited to 15 percent; however, an individual lot less than one acre may exceed the 15 percent limit. The maximum lot coverage limit for these lots is no longer capped at 25 percent as long as the subdivision as a whole, including its internal roads, complies with the 15 percent limit. The following standards summarize the lot coverage requirements:

1. In general, lot coverage is limited to 15 percent of a parcel or lot.
2. If a parcel or lot existed on or before December 1, 1985 in the Chesapeake Bay Critical Area, or on or before June 1, 2002 in the Coastal Bays Critical Area, and is one-half acre or less in size, then lot coverage is limited to 25 percent of the parcel or lot.
3. Unless otherwise restricted by a local government, a lot in a subdivision approved after December 1, 1985 in the Chesapeake Bay Critical Area or after June 1, 2002 in the Coastal Bays Critical Area may exceed the 15 percent lot coverage limit; however, lot coverage for the entire subdivision cannot exceed 15 percent. Any changes to a previously platted subdivision to adjust lot coverage limits, allowing individual lots to exceed the former 25 percent cap, will be considered a project that needs to be submitted to the Commission for

comment. The submittal must include appropriate documentation indicating that the entire subdivision is currently, and can be maintained, in full compliance with the new lot coverage provisions. The new definition of lot coverage would apply to the entire subdivision.

4. Lot coverage limits do not apply to a trailer park that was in residential use on or before December 1, 1985 in the Chesapeake Bay Critical Area or on or before June 1, 2002 in the Coastal Bays Critical Area.
5. For grandfathered lots that pre-date the Critical Area Program, a local government may allow a property owner to exceed the lot coverage limits outlined above and comply with the lot coverage limits set forth in the table below if the following requirements are met:
 - (a) Lot coverage associated with new development activities has been minimized;
 - (b) Water quality impacts associated with runoff from development activities that contribute to lot coverage have been minimized; and
 - (c) The property owner performs on-site mitigation or pays a fee-in-lieu of mitigation as required by the local jurisdiction to offset potential adverse water quality impacts.

LOT/PARCEL SIZE	LOT COVERAGE
0 – 8,000 SF	25% of Parcel + 500 SF
8,000 – 21,780 SF	31.25% of Parcel
21,781 – 36,300 SF	5,445 SF
36,301 – 43,560 SF	15 % of Parcel
Over 43, 560 SF	15 % of Parcel

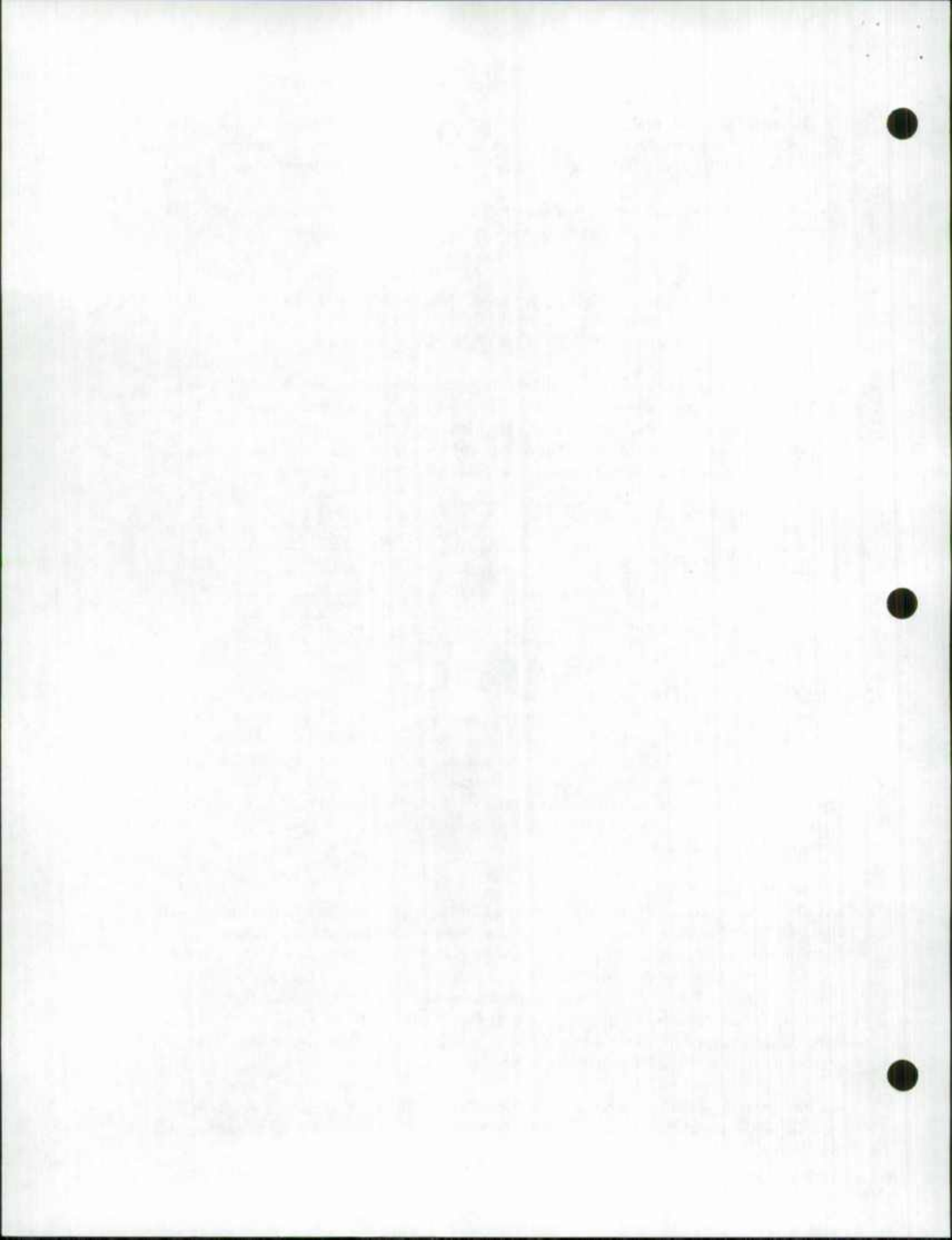
Lot Coverage Within the 100-Foot Buffer

Amendments to the law also clarify that there is no allowable, by right, percentage of lot coverage within the 100-Foot Buffer. Exceptions include projects defined as water-dependent facilities, projects in a Buffer Exemption Area under an approved local program, variances granted in accordance with the variance procedures in the law, and projects in waterfront revitalization areas or waterfront industrial areas developed under an approved local program. (A walkway or stairway through the Buffer that provides direct access to a pier is not included in lot coverage calculations.)

Grandfathering Provisions

In order to address the many existing developed lots that may be made non-conforming as a result of the new legislation and to accommodate development projects that are under design or in various stages of construction, the law includes grandfathering provisions. Lots or parcels that are legally developed (pre-dated a local Critical Area program or were properly permitted in accordance with the local program and impervious surface policies in effect at the time of construction) are considered legally nonconforming, even if the lot coverage on the property exceeds the specified limits. This means that all existing structures, accessory structures, and developed areas may remain in place.

For development activities associated with projects under design or in various stages of construction, there are two categories of projects where there is flexibility with regard to the new



lot coverage provisions. Projects in the categories described below may proceed in accordance with the impervious surface limits and accepted review practices and standards used by the local government prior to the new legislation.

1. The new lot coverage provisions do not apply to development projects for which a building permit was issued before July 1, 2008 as long as construction is initiated and an inspection is performed by July 1, 2009.
2. Projects that are under design may be exempted from the strict application of the lot coverage provisions if:
 - a) An application for a building permit or grading permit is filed by October 1, 2008, and the permit is issued by January 1, 2010; or
 - b) An initial application for development is filed by October 1, 2008, and the development plan is approved by July 1, 2010

In addition, projects under design must meet the following requirements:

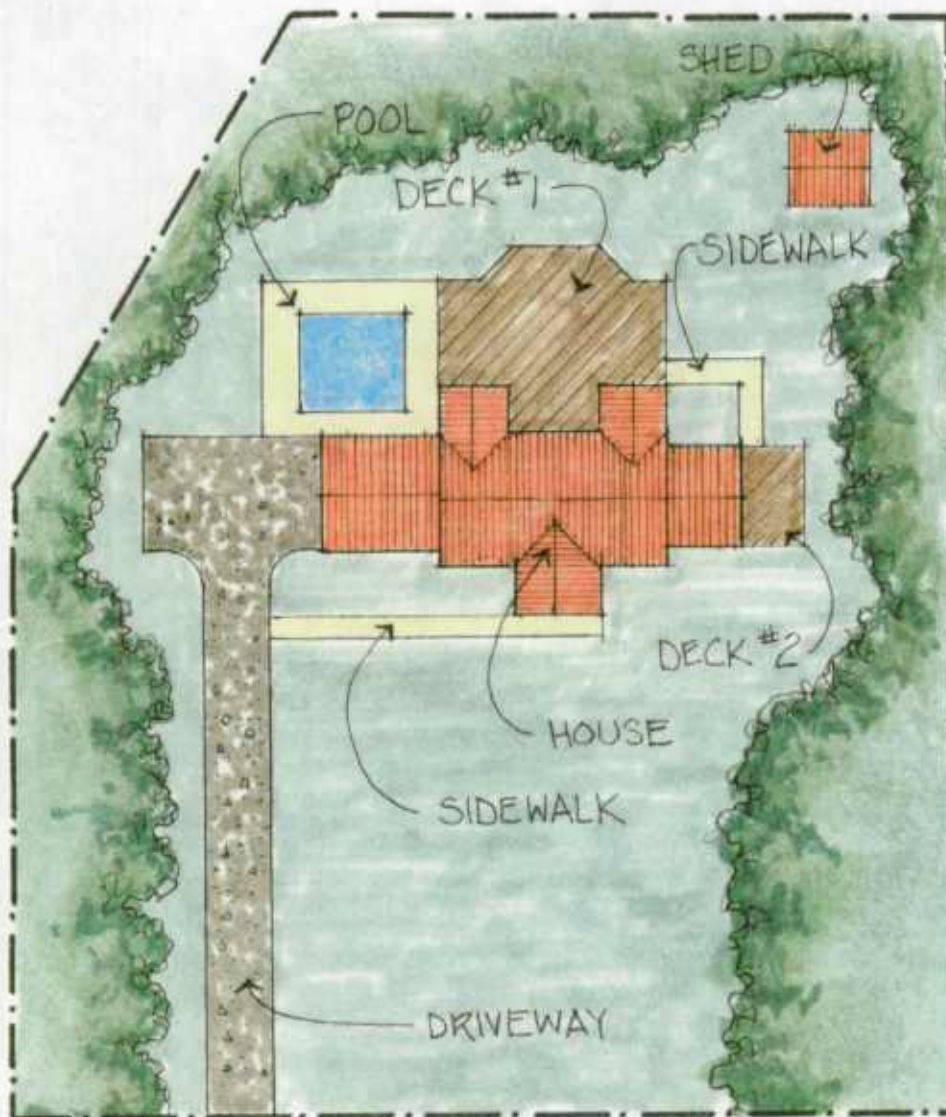
- a) There must be a detailed lot coverage plan, drawn to scale, showing the amounts of impervious surface area, partially pervious surface area, and developed pervious surface area for the project.
 - b) The lot coverage plan must be approved by the local government and maintained in the local jurisdiction's files.
 - c) The development plan must remain valid in accordance with local procedures, except that a moratorium or an adequate public facilities ordinance cannot terminate the validity of an approved development plan for purposes of lot coverage.
3. Development plans and lot coverage plans may be modified in accordance with formally adopted local policies or procedures; however, the amounts of impervious surface, partially pervious, and developed pervious areas cannot be increased. Reductions in these areas are permitted. (Developed pervious areas are those areas that would be included in lot coverage calculations under the 2008 legislation, but that previously were considered pervious by the local government in accordance with its written standards or approved practices prior to July 1, 2008.)
4. Projects, including new subdivisions, for which an initial application for development is filed by October 1, 2008 and approval is obtained by July 1, 2010, but for which there is no approved lot coverage plan, will be required to comply with all of the lot coverage provisions in House Bill 1253.
5. In order to properly and consistently implement the provisions involving grandfathering and lot coverage plans under House Bill 1253 and to ensure that the Commission provides appropriate comments on these projects, local governments must provide the Commission with a copy of the jurisdiction's written standards or approved practices regarding the percentage of imperviousness associated with various materials (i.e. pavers, decking, etc.) that were in effect prior to July 1, 2008. Local jurisdictions must also provide a list of projects for which lot coverage plans are filed.

Implementation Recommendations for Nonconforming Lots

As a result of the change in terminology from impervious surface to lot coverage and the definition of lot coverage, there are numerous lots or parcels that may be made "nonconforming" with regard to lot coverage. These are properties that are legally developed (pre-dated a local Critical Area program or were properly permitted in accordance with the local program and impervious surface policies in effect at the time of construction), but may now exceed the specified lot coverage limitations. This means that all existing structures, accessory structures, and developed pervious areas may remain in place; however, redevelopment activities must be carefully considered to ensure that they meet the intent of the lot coverage provisions.

Lot Coverage Plans

- Local governments may develop their own standards for lot coverage plans for individual building permits, projects involving site plan approval, and projects involving subdivision approval.
- Lot coverage plans must be drawn to scale and clearly show and identify all proposed development activities.
- The plans should be labeled or include a table that indicates the square footage and percentage of imperviousness associated with all impervious surfaces, partially pervious surfaces, and developed pervious areas.
- If a local government has previously allowed a percentage of imperviousness to be associated with various materials (i.e. pavers, decking, etc.) these percentages must be included on the plan and must be consistent with the local government's written standards or approved practices prior to July 1, 2008.
- The lot coverage plan should include a stamp indicating the local government's approval and should be signed and dated by the lot coverage plan reviewer.



LOT COVERAGE PLAN

SCALE: 1" = 40'-0"

LOT COVERAGE TABLE

Structure Type	Material	% Impervious	Square Footage	Impervious Area
HOUSE	TYPICAL	100	2520	2520
SHED	TYPICAL	100	252	252
DECK #1	WOOD W/ GAPS	50	2292	1146
DECK #2	WOOD W/ GAPS	50	280	140
POOL	CONCRETE	100	1140	1140
SIDEWALKS	PAVERS	60	412	247
DRIVEWAY	GRAVEL	0	2488	0
TOTAL			9384	5445

Impervious Area 5445 SF / Lot Size 39,900 SF = 13.6 %

Total 100% Impervious Area:	<u>3912</u>	SF
Total Partially Impervious (<u>50</u> %) Area:	<u>2572</u>	SF
Total Partially Impervious (<u>60</u> %) Area:	<u>412</u>	SF
Total Partially Impervious (____ %) Area:	_____	SF
Total Developed Pervious Area:	<u>2488</u>	SF

NOTE: The percentage of imperviousness associated with various materials (i.e. pavers, decking, etc.) included on the plan and the identification of "developed pervious areas" must be consistent with the local government's written standards or approved practices prior to July 1, 2008.

Annapolis	Planning Director	Mr.	Jon L.	Arason
	Planning Contact	Ms.	Sally	Nash
Betterton	Planning Contact	Ms.	Joanne	Hollidge
Cambridge	Planning Contact	Ms.	Anne	Roane
Centreville	Planning Contact	Mr.	Chris	Rogers
Charlestown	Elected Official	Mr.	Robert	Gell
	Town Admin	Mr.	Henry	Burden
Chesapeake Beach	Planning Director	Mr.	James	Parent
	Planning Contact	Mr.	William	Watson
Chesapeake City	Elected Official	Mr.	Frank	Hill
	Town Mgr	Ms.	Cristal	Jordan
Chestertown	Elected Official	Ms.	Margo	Bailey
	Town Mgr	Mr.	William	Ingersoll
Church Hill	Planning Contact	Ms.	Marie	Rameika
Crisfield	Planning Contact	Mr.	Noah	Bradshaw
Denton	Planning Contact	Mr.	Bill	Kashning
Easton	Planning Contact	Mr.	Lynn	Thomas
	Planning Director	Mr.	Thomas	Hamilton
Elkton	Planning Contact	Ms.	Jeanne	Minner
Federalburg	Planning Contact	Mr.	Happy	Mayer
Fruitland	Town Mgr	Mr.	John	McDonnell
	Elected Official	Mr.	Gregory	Olinde
	Attorney	Mr.	Andrew	Michell
Greensboro	Planning Contact	Ms.	Jeanette	DeLude
Havre de Grace	Planning Contact	Mr.	Donald	Bautz
Hillsboro	Planning Contact	Ms.	Melinda	Stafford
Indian Head	Planning Contact	Mr.	Ryan	Hicks
Leonardtown	Planning Contact	Ms.	Deann	Adler
Mardela Springs	Planning Contact	Ms.	Pat	Hooper
Millington	Elected Official	Mr.	T. Edward	Robinson
	Town Admin	Mr.	David	Teel
North Beach	Elected Official	Mr.	Michael	Bojokles
North East	Planning Contact	Ms.	Melissa	Cook-MacKenzie
Ocean City	Planning Contact	Ms.	Jesse	Houston
Oxford	Planning Contact	Ms.	Lillian	Lord
Perryville	Planning Director	Ms.	Heather	Erickson
Port Deposit	Planning Contact	Ms.	Laura	Luongo
Princess Anne	Town Mgr	Mr.	Jay	Parker
	Attorney	Mr.	Edgar	Baker
Queen Anne	Planning Contact	Ms.	Juanita	Kohn
Queenstown	Planning Contact	Ms.	Amy	Moore
Rock Hall	Planning Director	Ms.	Rosalie	Kuechler
St. Michaels	Planning Contact	Ms.	Debbie	Renshaw
Secretary	Planning Contact	Ms.	Yvonne	Pritchett
Sharptown	Planning Contact	Ms.	Judy	Schneider
Snow Hill	Planning Contact	Ms.	Karen	Houtman
Vienna	Elected Official	Mr.	Russell	Brinsfield

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	Planning Contact	Mr.	Chris	Soldano
	Planning Contact	Ms.	Kelly	Krinetz
Baltimore	Planning Director	Mr.	Arnold	Keller, Jr.
Baltimore City	Planning Contact	Ms.	Pat	Farr
	Planning Director	Mr.	Douglas	McCoach III
	Planning Contact	Mr.	Duncan	Stuart
Calvert	Planning Director	Dr.	David	Brownlee
	Planning Contact	Mr.	Greg	Bowen
Caroline	Planning Director	Ms.	Tammy	Buckle
	Planning Director	Ms.	Crystal	Porter-Dadds
Cecil	Planning Director	Mr.	Eric	Sennstrom
	Planning Contact	Mr.	Anthony	DiGiacomo
Charles	Planning Director	Mr.	David	Umling
Dorchester	Planning Contact	Ms.	Aimee	Dailey
	Planning Director	Mr.	Steve	Dodd
	Planning Contact	Mr.	Michael	Bonsteel
Harford	Planning Director	Mr.	Pete	Gutwald
	Planning Contact	Ms.	Pat	Pudelkewicz
Kent	Planning Director	Ms.	Gail	Owings
	Planning Contact	Ms.	Amy	Moredock
Prince George's	Planning Director	Dr.	Fern	Piret
	Planning Contact	Ms.	Susan	Hubbard
Queen Anne's	Planning Contact	Ms.	Cecilia	Lammers
	Planning Director	Mr.	Steve	Cohoon
	Planning Contact	Ms.	Holly	Thompkins
St. Mary's	Planning Director	Mr.	Denis	Canavan
	Planning Contact	Ms.	Sue	Veith
Somerset	Planning Director	Mr.	Jack	Willing
	Planning Contact	Ms.	Tom	Lawton
Talbot	Planning Contact	Ms.	Mary Kay	Verdery
Wicomico	Planning Director	Mr.	John	Lenox
	Planning Contact	Mr.	Jimmy	Sharp
Worcester	Planning Director	Mr.	Ed	Tudor
	Planning Contact	Ms.	Janet	Davis
	Planning Contact	Mr.	Chris	McCabe

Martin O'Malley
Governor

Anthony G. Brown
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Margaret G. McHale
Chair

Ren Serey
Executive Director

STATE OF MARYLAND
CRITICAL AREA COMMISSION
CHESAPEAKE AND ATLANTIC COASTAL BAYS

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September 26, 2008

Mr. Jon L. Arason
145 Gorman Street
3rd Floor
Annapolis, MD 21401

Dear Mr. Arason:

As we continue to provide local Critical Area programs with as much information and guidance as possible concerning the implementation of House Bill 1253, enclosed for your convenient reference is a document entitled Local Government Assistance Guide: Lot Coverage.

As you will see, this document provides the basic components of the new lot coverage requirements. In addition, it provides a sample lot coverage plan that relates to the following exemptions from these new requirements:

- Building or grading permits for which application is made prior to October 1, 2008 and receive final approval by January 1, 2010; and
- Initial applications for development that are filed by October 1, 2008 and receive final approval by July 1, 2010.

For projects that fall within these timeframes, a lot coverage plan is necessary in order to specify the local impervious requirements in effect prior to July 1, 2008 that will apply to these grandfathered projects. As also explained in the guidance document, lot coverage plans must be approved and maintained by the local jurisdictions; **by October 1, 2010** a list of all projects for which a lot coverage plan has been approved must be sent to the Commission.


Since impervious surface requirements varied widely among the jurisdictions prior to July 1, 2008, having a written copy of your jurisdiction's impervious surface procedures and practices that were in place before July 1 would greatly aid Commission staff in their review of these "pipeline" projects. We would appreciate your response by **October 31, 2008**. This list should include only a material for which a decision about its porosity had been made prior to July 1, 2008. Please note that House Bill 1253 allows grandfathering only for practices actually implemented by a local program before July 1, 2008. Thus, neither Commission staff nor local

program staff is authorized to make a grandfathering determination regarding a product or material that could have been considered pervious at that time but was never formally recognized as such.

Knowing that everyone will continue to have questions concerning redevelopment on grandfathered lots that already exceed the allowable lot coverage limits, we will continue that discussion with various local programs in order to come to a reasonable resolution for these lots.

As always, our staff is available to field any questions or concerns you have regarding this aspect of the new law. Please let us know your questions and concerns, and we thank you for all your efforts during this transition process.

Sincerely,



Margaret McHale
Chair

Enclosure

LOCAL GOVERNMENT ASSISTANCE GUIDE

Lot Coverage

Approved September 3, 2008

Background

In the spring of 2008, House Bill 1253 amended the provisions of § 8-1808 of the Natural Resources Article of the Annotated Code of Maryland pertaining to limiting the footprint of development activity of properties designated as Limited Development Area (LDA) and Resource Conservation Area (RCA) within the Critical Area. The amendment involved primarily a change in terminology from "impervious surface" to "lot coverage." The effect of this change was to include all developed areas of a property that are not vegetated or in a naturally permeable state as part of lot coverage limitations set forth in the law.

The purpose of this amendment was to focus on limiting the "footprint of development activity" by providing a clear and inclusive definition that could be applied consistently and uniformly throughout the Critical Area.

This document summarizes current law regarding limitations on lot coverage within LDAs and RCAs in the Critical Area. Pending the development and approval of regulations, it is intended as interim guidance to local governments and applicants for development activity regarding the implementation of the lot coverage provisions.

Definition

The Critical Area Law now includes a definition of lot coverage that reads as follows:

"Lot Coverage" means the percentage of a total lot or parcel that is:

1. Occupied by a structure, accessory structure, parking area, driveway, walkway, or roadway; or
2. Covered with gravel, stone, shell, impermeable decking, a paver, permeable pavement, or any manmade material.

Lot coverage does not include:

1. A fence or wall that is less than one foot in width that has not been constructed with a footer;
2. A walkway in the Buffer or expanded Buffer, including a stairway, that provides direct access to a community or private pier (local governments shall ensure that impacts to the Buffer associated with access are minimized);
3. A wood mulch pathway; or
4. A deck with gaps to allow water to pass freely.

NOTE: (In response to numerous inquiries from local jurisdictions, the following is meant for clarification purposes:

Impermeable decks - Lot coverage includes the ground area covered or occupied by an impermeable deck, even when that deck is not directly touching the ground surface.

Stairways - Lot coverage does not include walkways or stairways in the Buffer that provide direct access to a community or private pier. All other stairs or walkways count.

Stormwater management and erosion control measures - Lot coverage does not include these practices when they are approved only for the specific purpose of performing stormwater management or erosion control.)

Lot Coverage Limits

In general, the limits of development remain the same except for a change that will facilitate clustering where small lots may be created and developed in order to promote the conservation of larger areas of the project site. For new subdivisions, lot coverage within the subdivision as a whole is still limited to 15 percent; however, an individual lot less than one acre may exceed the 15 percent limit. The maximum lot coverage limit for these lots is no longer capped at 25 percent as long as the subdivision as a whole, including its internal roads, complies with the 15 percent limit. The following standards summarize the lot coverage requirements:

1. In general, lot coverage is limited to 15 percent of a parcel or lot.
2. If a parcel or lot existed on or before December 1, 1985 in the Chesapeake Bay Critical Area, or on or before June 1, 2002 in the Coastal Bays Critical Area, and is one-half acre or less in size, then lot coverage is limited to 25 percent of the parcel or lot.
3. Unless otherwise restricted by a local government, a lot in a subdivision approved after December 1, 1985 in the Chesapeake Bay Critical Area or after June 1, 2002 in the Coastal Bays Critical Area may exceed the 15 percent lot coverage limit; however, lot coverage for the entire subdivision cannot exceed 15 percent. Any changes to a previously platted subdivision to adjust lot coverage limits, allowing individual lots to exceed the former 25 percent cap, will be considered a project that needs to be submitted to the Commission for

comment. The submittal must include appropriate documentation indicating that the entire subdivision is currently, and can be maintained, in full compliance with the new lot coverage provisions. The new definition of lot coverage would apply to the entire subdivision.

4. Lot coverage limits do not apply to a trailer park that was in residential use on or before December 1, 1985 in the Chesapeake Bay Critical Area or on or before June 1, 2002 in the Coastal Bays Critical Area.
5. For grandfathered lots that pre-date the Critical Area Program, a local government may allow a property owner to exceed the lot coverage limits outlined above and comply with the lot coverage limits set forth in the table below if the following requirements are met:
 - (a) Lot coverage associated with new development activities has been minimized;
 - (b) Water quality impacts associated with runoff from development activities that contribute to lot coverage have been minimized; and
 - (c) The property owner performs on-site mitigation or pays a fee-in-lieu of mitigation as required by the local jurisdiction to offset potential adverse water quality impacts.

LOT/PARCEL SIZE	LOT COVERAGE
0 – 8,000 SF	25% of Parcel + 500 SF
8,000 – 21,780 SF	31.25% of Parcel
21,781 – 36,300 SF	5,445 SF
36,301 – 43,560 SF	15 % of Parcel
Over 43, 560 SF	15 % of Parcel

Lot Coverage Within the 100-Foot Buffer

Amendments to the law also clarify that there is no allowable, by right, percentage of lot coverage within the 100-Foot Buffer. Exceptions include projects defined as water-dependent facilities, projects in a Buffer Exemption Area under an approved local program, variances granted in accordance with the variance procedures in the law, and projects in waterfront revitalization areas or waterfront industrial areas developed under an approved local program. (A walkway or stairway through the Buffer that provides direct access to a pier is not included in lot coverage calculations.)

Grandfathering Provisions

In order to address the many existing developed lots that may be made non-conforming as a result of the new legislation and to accommodate development projects that are under design or in various stages of construction, the law includes grandfathering provisions. Lots or parcels that are legally developed (pre-dated a local Critical Area program or were properly permitted in accordance with the local program and impervious surface policies in effect at the time of construction) are considered legally nonconforming, even if the lot coverage on the property exceeds the specified limits. This means that all existing structures, accessory structures, and developed areas may remain in place.

For development activities associated with projects under design or in various stages of construction, there are two categories of projects where there is flexibility with regard to the new

lot coverage provisions. Projects in the categories described below may proceed in accordance with the impervious surface limits and accepted review practices and standards used by the local government prior to the new legislation.

1. The new lot coverage provisions do not apply to development projects for which a building permit was issued before July 1, 2008 as long as construction is initiated and an inspection is performed by July 1, 2009.
2. Projects that are under design may be exempted from the strict application of the lot coverage provisions if:
 - a) An application for a building permit or grading permit is filed by October 1, 2008, and the permit is issued by January 1, 2010; or
 - b) An initial application for development is filed by October 1, 2008, and the development plan is approved by July 1, 2010

In addition, projects under design must meet the following requirements:

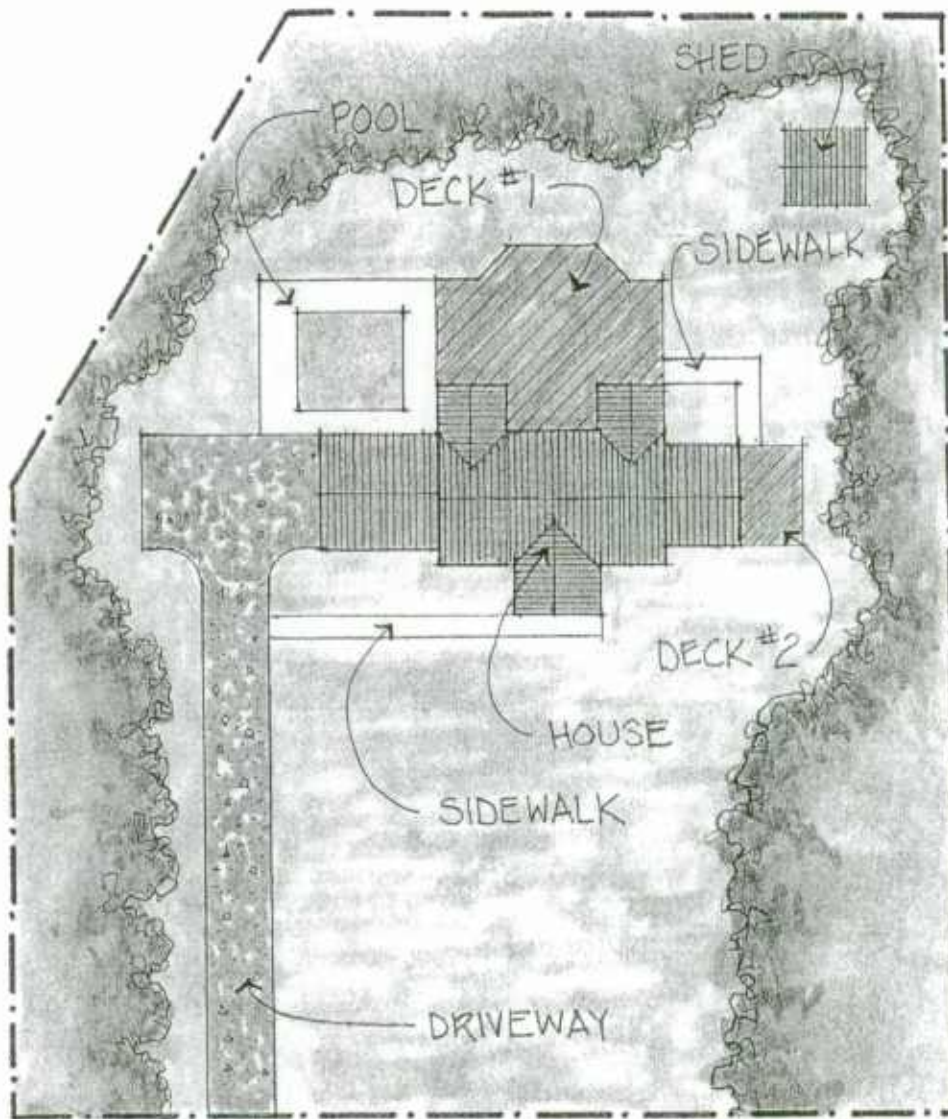
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 - c) The development plan must remain valid in accordance with local procedures, except that a moratorium or an adequate public facilities ordinance cannot terminate the validity of an approved development plan for purposes of lot coverage.
3. Development plans and lot coverage plans may be modified in accordance with formally adopted local policies or procedures; however, the amounts of impervious surface, partially pervious, and developed pervious areas cannot be increased. Reductions in these areas are permitted. (Developed pervious areas are those areas that would be included in lot coverage calculations under the 2008 legislation, but that previously were considered pervious by the local government in accordance with its written standards or approved practices prior to July 1, 2008.)
4. Projects, including new subdivisions, for which an initial application for development is filed by October 1, 2008 and approval is obtained by July 1, 2010, but for which there is no approved lot coverage plan, will be required to comply with all of the lot coverage provisions in House Bill 1253.
5. In order to properly and consistently implement the provisions involving grandfathering and lot coverage plans under House Bill 1253 and to ensure that the Commission provides appropriate comments on these projects, local governments must provide the Commission with a copy of the jurisdiction's written standards or approved practices regarding the percentage of imperviousness associated with various materials (i.e. pavers, decking, etc.) that were in effect prior to July 1, 2008. Local jurisdictions must also provide a list of projects for which lot coverage plans are filed.

Implementation Recommendations for Nonconforming Lots

As a result of the change in terminology from impervious surface to lot coverage and the definition of lot coverage, there are numerous lots or parcels that may be made "nonconforming" with regard to lot coverage. These are properties that are legally developed (pre-dated a local Critical Area program or were properly permitted in accordance with the local program and impervious surface policies in effect at the time of construction), but may now exceed the specified lot coverage limitations. This means that all existing structures, accessory structures, and developed pervious areas may remain in place; however, redevelopment activities must be carefully considered to ensure that they meet the intent of the lot coverage provisions.

Lot Coverage Plans

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- Lot coverage plans must be drawn to scale and clearly show and identify all proposed development activities.
- The plans should be labeled or include a table that indicates the square footage and percentage of imperviousness associated with all impervious surfaces, partially pervious surfaces, and developed pervious areas.
- If a local government has previously allowed a percentage of imperviousness to be associated with various materials (i.e. pavers, decking, etc.) these percentages must be included on the plan and must be consistent with the local government's written standards or approved practices prior to July 1, 2008.
- The lot coverage plan should include a stamp indicating the local government's approval and should be signed and dated by the lot coverage plan reviewer.



LOT COVERAGE PLAN

SCALE: 1" = 40'-0"

LOT COVERAGE TABLE

Structure Type	Material	% Impervious	Square Footage	Impervious Area
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Impervious Area 5445 SF / Lot Size 39,900 SF = 13.6 %

Total 100% Impervious Area:	<u>3912</u>	SF
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Total Developed Pervious Area:	<u>2488</u>	SF

NOTE: The percentage of imperviousness associated with various materials (i.e. pavers, decking, etc.) included on the plan and the identification of "developed pervious areas" must be consistent with the local government's written standards or approved practices prior to July 1, 2008.

Mr. Jon L. Arason

Ms. Joanne Hollidge

Mr. Chris Rogers

Mr. Henry Burden

Mr. William Watson

Mr. William Ingersoll

Mr. Noah Bradshaw

Mr. Lynn Thomas

Ms. Jeanne Minner

Mr. John McDonnell

Mr. Andrew Michell

Mr. Donald Bautz

Mr. Ryan Hicks

Ms. Pat Hooper

Ms. Melissa Cook-MacKenzie

Ms. Lillian Lord

Ms. Laura Luongo

Mr. Edgar Baker

Ms. Amy Moore

Ms. Sally Nash

Ms. Anne Roane

Mr. Robert Gell

Mr. James Parent

Ms. Cristal Jordan

Ms. Marie Rameika

Mr. Bill Kashning

Mr. Thomas Hamilton

Mr. Happy Mayer

Mr. Gregory Olinde

Ms. Jeanette DeLude

Ms. Melinda Stafford

Ms. Deann Adler

Mr. David Teel

Ms. Jesse Houston

Ms. Heather Erickson

Mr. Jay Parker

Ms. Juanita Kohn

Ms. Rosalie Kuechler

Ms. Debbie Renshaw

Ms. Judy Schneider

Mr. Larry Tom
P & Z Officer

Ms. Kelly Krinetz

Ms. Pat Farr

Mr. Duncan Stuart

Mr. Greg Bowen

Ms. Crystal Porter-Dadds
Acting Director

Mr. Anthony DiGiacomo

Ms. Aimee Dailey

Mr. Michael Bonsteel

Ms. Pat Pudelkewicz

Ms. Amy Moredock

Ms. Susan Hubbard
????

Mr. Steve Cohoon
Director of Planning

Mr. Denis Canavan
Planning Director

Mr. Jack Willing
Planning Director

Ms. Mary Kay Verdery
Acting Director

Mr. Jimmy Sharp

Ms. Yvonne Pritchett

Ms Karen Houtman

Mr. Chris Soldano

Mr. Arnold Keller, Jr.
Director of Planning

Mr. Douglas McCoach III
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Ms. Tammy Buckle
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Mr. Pete Gutwald
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Ms. Gail Owings
Planning Director

Dr. Fern Piret
Director of Planning

Ms. Cecilia Lammers
????

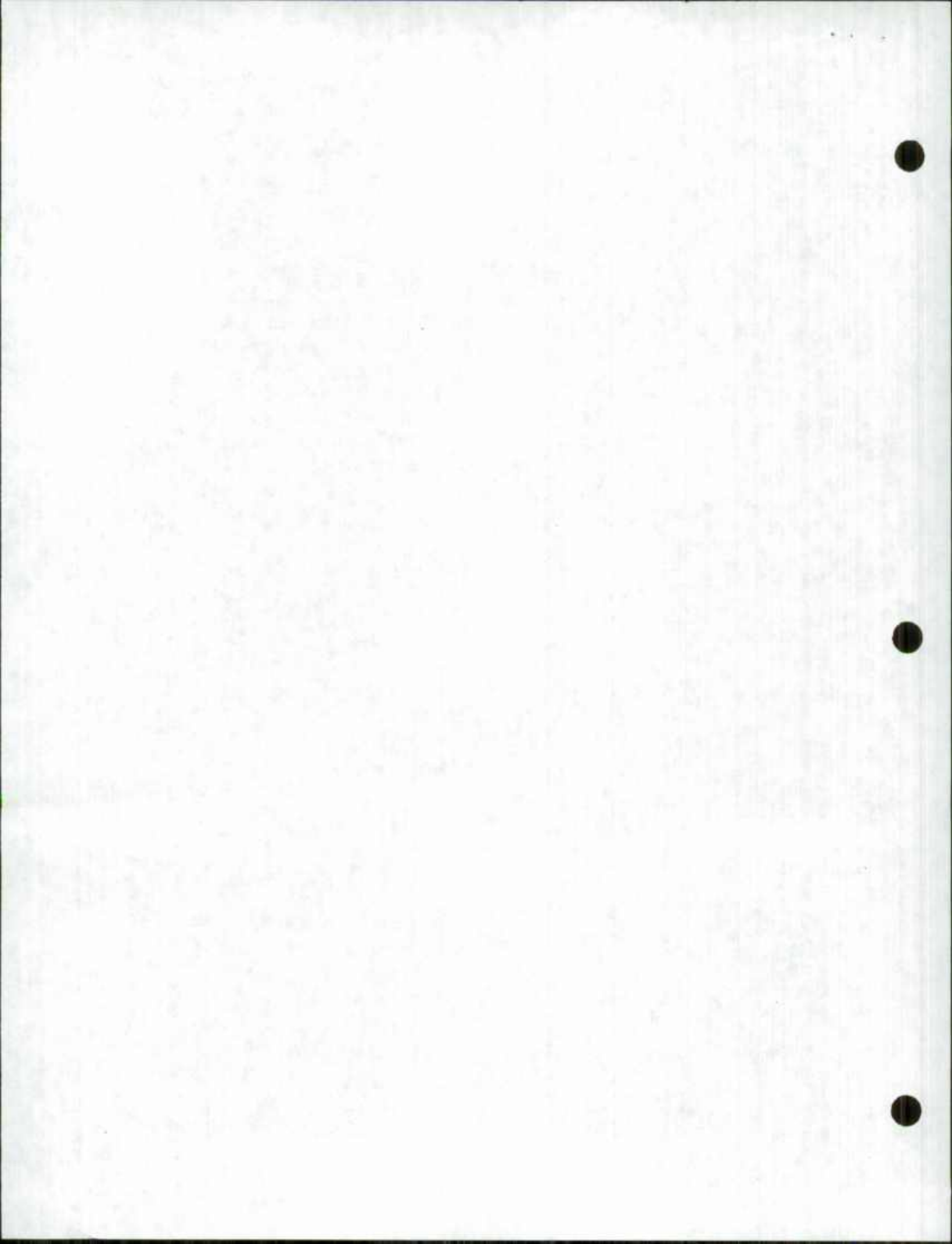
Ms. Holly Thompkins
County Planner

Ms. Sue Veith

Ms. Tom Lawton

Mr. John Lenox
Planning Director

Mr. Ed Tudor
Planning Director



Ms. Janet Davis

The Honorable Russell Brinsfield
The Honorable

The Honorable T. Edward Robinson
The Honorable

The Honorable Frank Hill
The Honorable

Mr. Bill Kastning

Mr. Chris McCabe

The Honorable Michael Bojokles
The Honorable

The Honorable Margo Bailey
The Honorable

Ms. DeAnn Adler

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Margaret G. McHale
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Executive Director

STATE OF MARYLAND
CRITICAL AREA COMMISSION
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www.dnr.state.md.us/criticalarea/

October 9, 2008

Mr. Jack Willing
Department of Technical and Community Services
11916 Somerset Avenue
Princess Anne, MD 21853

Re: Somerset County Critical Area Program and Zoning Ordinance
Refinement – Adoption of Changes to Administration and Enforcement Provisions

Dear Mr. Willing:

The purpose of this letter is to officially notify you of the Critical Area Commission's action on the above referenced Critical Area Program refinement. On October 3, 2008, the Critical Area Commission concurred with my decision that the changes to the Critical Area regulations made as a result of the noted deficiency in the Somerset Zoning Ordinance could be accepted as a refinement to the County's Critical Area Program. I have approved this text refinement.

As a result of these changes to the Somerset Zoning Ordinance and Critical Area Program, the Critical Area Commission's June 4, 2008 sanction is lifted. The County may resume the processing of variances.

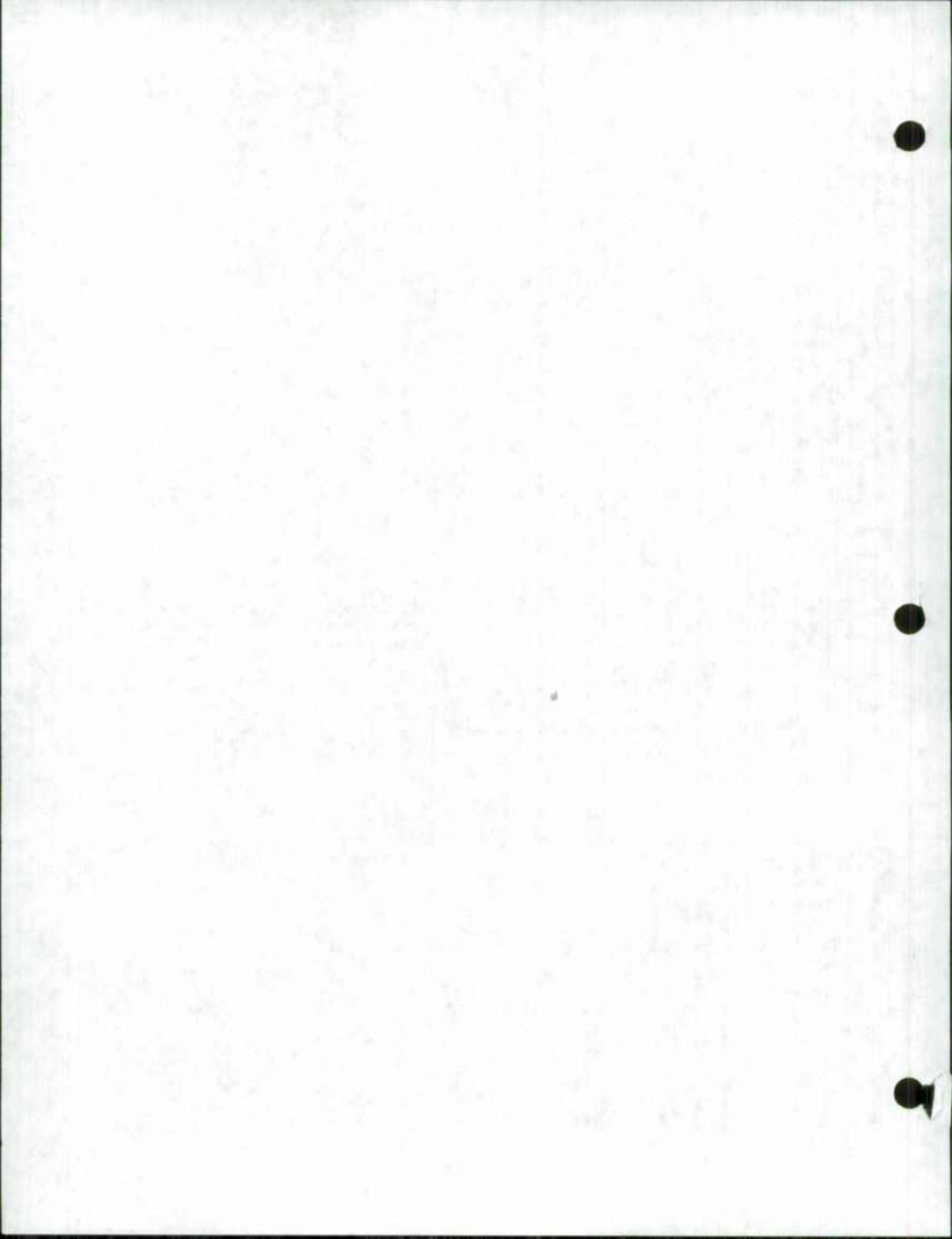
Under the provisions of the Critical Area law, the new ordinance sections shall be officially incorporated into the County's Critical Area Program within 120 days of the date of this letter. Please provide a copy of the updated ordinance when it becomes available. On behalf of the Commission, I want to thank you and the Board of County Commissioners for your commitment to addressing these programmatic changes.

If you have any questions, please do not hesitate to contact me at (410) 260-3460.

Sincerely,

A handwritten signature in cursive script, reading "Margaret G. McHale".

Margaret G. McHale, Chair
Critical Area Commission



Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor



Margaret G. McHale
Chair

Ren Serey
Executive Director

**STATE OF MARYLAND
CRITICAL AREA COMMISSION
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October 16, 2008

Mr. Eric Sennstrom, Director
Cecil County Department of Planning and Zoning
County Administration Building
200 Chesapeake Boulevard, Suite 2300
Elkton, MD 21921

Re: Cecil County Critical Area Program -- Sanction and Text Amendments

Dear Mr. Sennstrom:

I am glad that our meeting with Commissioner Manlove, Mr. DiGiacomo, and yourself on Tuesday, October 14 yielded a mutually satisfying resolution of the outstanding issues related to the enforcement and administration of your local Critical Area Program. As per our agreement reached at that meeting, this letter notifies you of my decision on the changes to the Cecil County Zoning Ordinance enacted in response to the Critical Area Commission's action of October 9, 2007, which identified deficiencies in two parts of the County's Critical Area Program – that is, provisions regarding Buffer Exemption Areas and provisions regarding Habitat Protection Areas.

At the regular business meeting of the full Critical Area Commission on October 1, 2008, the Commission concurred with my determination that the changes to the Cecil County ordinance could be processed as a program refinement. Also discussed at the Commission's October 1, 2008 meeting was a Decision of the Cecil County Board of Zoning Appeals which is null and void under the terms of the Critical Area Commission's October 9, 2007 action.

The full Commission voted on two motions: (1) to recommend that I approve the definitions and text changes consistent with the Commission's Staff report; and (2) to recommend that the sanction continue against Cecil County's Critical Area Program pending my meeting with the County to obtain additional information from the County Commissioners and the Board of Appeals regarding the Board's Decision in Case No. 3409. As you know, pursuant to Code, Natural Resources Article §8-1809 (p), my final determination on the County's request to approve its program changes must be made by the end of today.

Given the agreement reached on October 14, and in accordance with the Memorandum of Agreement attached to this letter, I have decided to approve the text changes to the Cecil County Zoning Ordinance as a refinement to the Cecil County Critical Area Program, subject to the following conditions:

- (1) Within 120 days from receipt of this letter, Cecil County will revise the submitted text changes in accordance with the conditions listed on pages 2-4 of the Staff Report dated October 1, 2008 (enclosed); and
- (2) Cecil County will implement the Memorandum of Agreement as executed among all parties on October 16, 2008 (enclosed).

Please note that this decision allows Cecil County to process and to approve new subdivisions in Habitat Protection Areas. This decision, however, does not allow Cecil County to approve any new subdivisions in Buffer Exemption Areas; nor does it allow the Board of Appeals to consider or approve any variance in a Buffer Exemption Area until all of the actions agreed upon in the Memorandum of Agreement have been fully completed.

The Memorandum of Agreement sets forth the process under which the County agreed to present a request for rescission of the Board of Appeals' null and void Decision in Case No. 3409 (Mita), and, by rescinding that Decision, to fulfill the condition of approval of Refinement. The following is a summary of the understanding we reached as to the County's process for further action on the Mita variance request:

- The County and the Critical Area Commission agree that the Board of Appeals may consider a renewed variance request for the Mita property based on the original request, as well as the transcript, record, and exhibits presented at the Board's July, 2008 hearing, as supplemented by any new information received in response to public notice of the renewed variance request.
- Critical Area Commission staff will provide written comments to the Board in advance of the date of the Board's consideration of a renewed variance request.
- Whether the Board wishes to receive oral testimony to supplement the record created at the July, 2008 hearing is a matter best left to the discretion of the Board.

We also discussed a recurring problem that Critical Area Commission staff have identified: that the Board of Appeals members do not consistently receive Commission staff comments in variance cases. For example, in several cases that have been appealed to the Circuit Court, the letters sent by Commission staff in advance of the Board's hearings have not been part of the official record. To address that significant omission, and at your request, the Critical Area Commission agreed to provide written comments in the Mita case and in all future Cecil County variance cases in two formats: (1) by email to you personally; and (2) by hard copy to you as well. In turn, you have agreed to distribute both the Commission's emailed comments and the hard copy to each individual Board Member promptly upon your receipt and in advance of the public hearing. You

Eric Sennstrom
October 16, 2008
Page 3 of 3

also agreed that the Commission staff comments would be part of the Board's official record in each case.

I trust that our amicable resolution of these matters will serve to strengthen the state-local partnership that is the foundation of the Critical Area Program, and, particularly now that we have met personally, I look forward to working with you in the future. If you have any questions or concerns, please contact this office at (410) 260-3460.

Sincerely,



Margaret G. McHale
Chair

Enclosures (2)

cc: William C. Manlove, President, Board of Cecil County Commissioners
David Willis, Chairman, Cecil County Board of Zoning Appeals
Anthony J. DiGiacomo, AICP, Principal Planner, Cecil County Department of
Planning and Zoning

Critical Area Commission

STAFF REPORT

October 1, 2008

APPLICANT: Cecil County

PROPOSAL: Refinement – Cecil County Critical Area Ordinance Text Amendments

COMMISSION ACTION: Concurrence

STAFF RECOMMENDATION: Concur with the Chair's Determination

STAFF: Nick Kelly

**APPLICABLE LAW/
REGULATIONS:** Natural Resources Article §8-1809 (h), §8-1809(p)

DISCUSSION:

The Cecil County Board of Commissioners has enacted amendments to the Cecil County Zoning Ordinance in response to the Critical Area Commission action of October 2007, which placed sanctions on the County's Critical Area Program for the following reasons:

1. The absence of standards for variances in new subdivisions located in the Buffer Exemption Area in §195 of the Cecil County Zoning Ordinance
2. The absence of specific language addressing current scientific standards for the protection of Habitat Protection Areas in §200 of the Cecil County Zoning Ordinance.

The County was directed to submit the necessary changes to correct these deficiencies. County staff has worked diligently with Commission staff to correct all outstanding issues. Attached is a copy of the amended Zoning Ordinance that has been developed as a result of this collaboration. The submitted text amendments are intended to address both sanctions by incorporating current standards into the County Zoning Ordinance.

A comprehensive review of the County's Critical Area program is currently due. A timetable for

completion has been established by Commission and County staff, and a copy of the timetable is provided for reference.

Staff Recommendation

While the proposed text amendments represent numerous changes to the Cecil County Critical Area Program and Zoning Ordinance, these changes are the result of considered action by the Commission. The County's proposed changes appear to fully address the program deficiencies the Commission identified and bring the local program into compliance with the Critical Area law and Criteria. Therefore, Commission staff recommends that the Commission concur with the Chair's recommendation for refinement with the following conditions:

Key: Existing Text

~~Text to Delete~~

Text to Add

1. The following definitions shall be replaced/added within the Cecil County Zoning Ordinance:

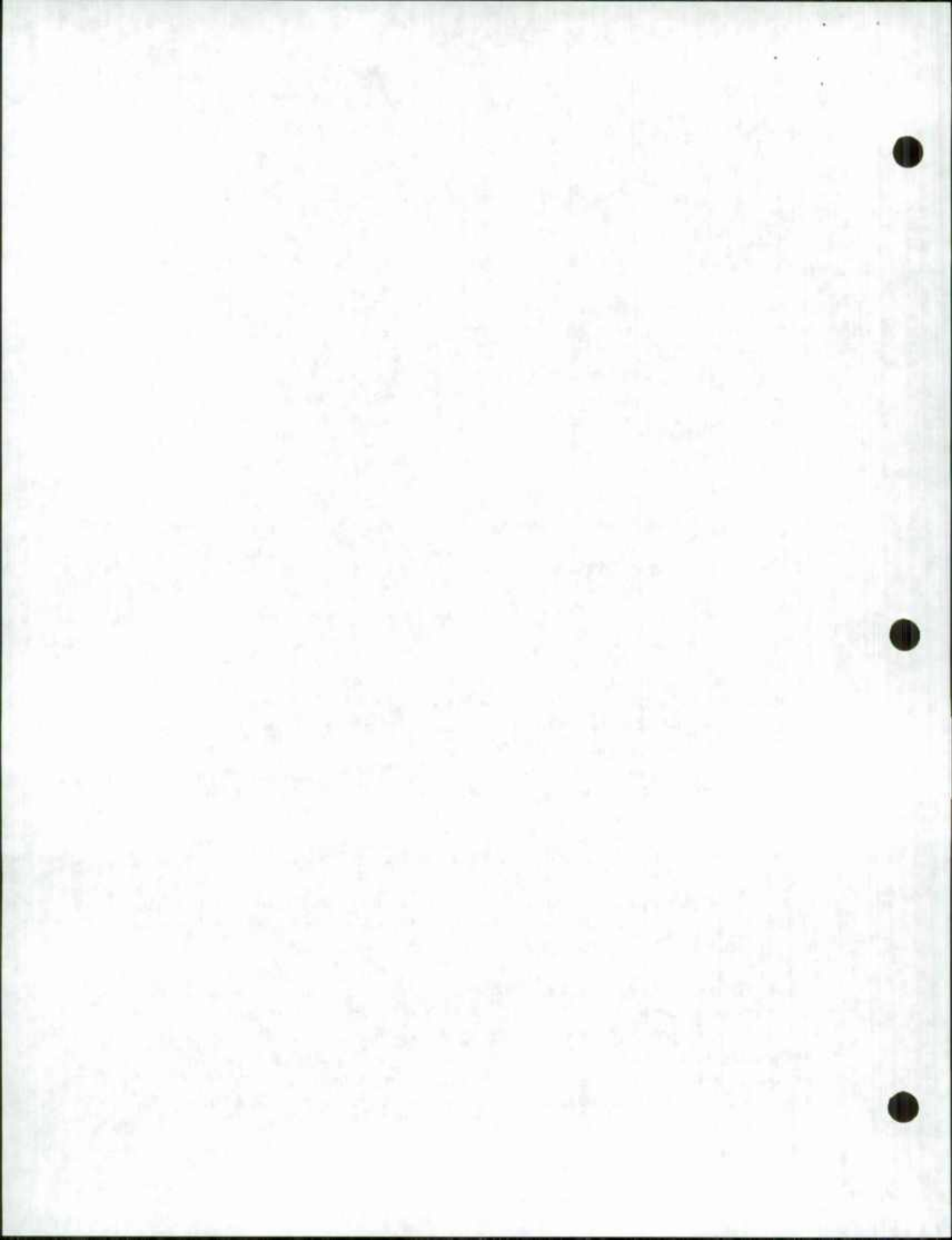
§12. Definitions of Basic Terms

Critical Area Commission. The Critical Area Commission for the Chesapeake and Atlantic Coastal Bays.

Intensely Developed Areas(IDA). An area of at least 20 acres or the entire upland portion of the Critical Area within a municipal corporation, whichever is less where: 1. Residential, commercial, institutional, or industrial developed land uses predominate; and 2. A relatively small amount of natural habitat occurs. "Intensely Developed Area" includes: 1. an area with a housing density of at least four dwelling units per acre; 2. An area with public water and sewer systems with a housing density of more than three dwelling units per acre; 3. A commercial marina redesignated by a local jurisdiction from a resource conservation area or limited development area to an intensely developed area through a mapping correction that occurred before January 1, 2006.

Legally developed. All physical improvements to a property existed before Commission approval of a local program; or were properly permitted in accordance with the local program and impervious surface polices in effect at the time of construction.

Limited Development Area (LDA). An area: 1. That is developed in low or moderate intensity uses and contains areas of natural plant and animal habitat; and 2. Where the quality of runoff has not been substantially altered or impaired. Limited Development Area includes an area: 1. With a housing density ranging from one dwelling unit per five acres up to four dwelling units per acre; 2. With a public water or sewer system; 3. That is not dominated by agricultural land, wetland, forests, barren land, surface



water, or open space; or 4. That is less than 20 acres and otherwise qualifies as an Intensely Developed Area.

Lot coverage. The percentage of a total lot or parcel that is: 1. Occupied by a structure, accessory structure, parking area, driveway, walkway, or roadway; or 2. Covered with gravel, stone, shell, impermeable decking, a paver, permeable pavement, or any manmade material. "Lot coverage" includes the ground area covered or occupied by a stairway or impermeable deck. Lot coverage does not include: 1. A fence or wall that is less than 1 foot in width that has not been constructed with a footer; 2. A walkway in the Buffer or expanded Buffer, including a stairway, that provides direct access to a community or private pier; 3. A wood mulch pathway; or 4. A deck with gaps to allow water to pass freely.

Property owner. Includes two or more persons holding title to the property under any form of joint ownership.

Resource Conservation Areas (RCA). An area that is characterized by: 1. Nature dominated environments, such as wetlands, surface water, forests and open space; and 2. Resource-based activities, such as agriculture, forestry, fisheries, or aquaculture. Resource Conservation Area includes an area with a housing density of less than one dwelling per five acres.

Tributary Streams. A perennial stream or an intermittent stream within the Critical Area that has been identified by site inspection or in accordance with local program procedures approved by the Commission.

2. The following additional text changes shall be made to Cecil County Zoning Ordinance text:

195.1(i): Redevelopment means a development activity that takes place on a property with pre-development imperviousness ~~percent~~ of 15 percent or greater as of December 1, 1985.

195.6.i(2): Applicants who cannot comply with planting requirements may use offsets to meet the mitigation requirements. Offsets may include the removal of an equivalent area of existing ~~lot coverage impervious surface~~ within....

195.6.i: (4) **Modification of the mitigation standards as described in Section 200.6.b(1) does not apply.**

197.12.b(3): When proposing development activities within riparian forests or forest areas utilized as breeding areas by forest interior dwelling birds, applicants ~~will~~ **shall** utilize the....

197.12.b(4): If a forest is to be developed or to be harvested, a site specific field investigation shall be conducted to determine if important sensitive species are present and to make sure that appropriate protection measure are incorporated in the development plan or Timber Harvest Plan. (When proposing development activities within riparian forests or forests utilized as breeding areas by forest interior dwelling species applicants ~~will~~ **shall** utilize the....

199.2: All sites for which development activities are proposed and which require subdivision approval or site plan review and approval, shall identify environmental or natural features on that portion of the site within the Critical Area. **This information shall be made part of the Environmental Impact Assessment Report as part of the application for site plan review.**

199.3: Development and redevelopment shall be subject to the Habitat Protection Area provisions prescribed in COMAR 27.01.09 and in these regulations. **Where said protection of Habitat Protection Areas is required, the Environmental Assessment shall include the Habitat Protection Plan per Section 197.10.a and the final plat shall include appropriate notes.**

203.1.c: All such amendments shall also be approved by the Maryland ~~Chesapeake Bay~~ Critical Area Commission (~~Critical Area Commission~~) as established in Subsection 8 1809 of the Critical Area Law, Subtitle 18. The Critical Area Commission process for approval of proposed amendments are as set forth in the Critical Area Law, Subtitle 18, Subsection 8-1809.

213.4: If the application for a Project Point Scoring System Exemption for a Growth Allocation Floating Zone is approved by the Board of County Commissioners for Cecil County and the ~~Chesapeake Bay~~ Critical Area Commission, the applicant shall submit a major site plan to the Office of Planning and Zoning for review in accordance with Section 291 of this Ordinance.

3. Throughout the Zoning Ordinance, all references to "Buffer Modification Area" or "Buffer Exemption Area" shall be replaced with "Modified Buffer Area."

MEMORANDUM OF AGREEMENT

BETWEEN

THE COUNTY COMMISSIONERS OF CECIL COUNTY,

THE CECIL COUNTY BOARD OF ZONING APPEALS,

AND

**THE CHAIR OF THE CRITICAL AREA COMMISSION FOR
THE CHESAPEAKE AND ATLANTIC COASTAL BAYS**

THIS MEMORANDUM OF AGREEMENT ("Agreement"), entered into this _____ day of October, 2008, is by and among the **COUNTY COMMISSIONERS OF CECIL COUNTY**, a body corporate and politic and a political subdivision of the State of Maryland ("Cecil County"), the **CECIL COUNTY BOARD OF ZONING APPEALS**, an independent agency within Cecil County ("Board of Appeals"), and the **CHAIR OF THE CRITICAL AREA COMMISSION FOR THE CHESAPEAKE AND ATLANTIC COASTAL BAYS**, acting in her official capacity ("Critical Area Commission Chair").

WHEREAS, Cecil County is responsible for reviewing and approving private development projects, located on privately-owned lands within the Chesapeake and Atlantic Coastal Bays Critical Area in Cecil County ("Critical Area") and for ensuring that those development activities undertaken on lands within the Critical Area are consistent with the Cecil County Critical Area Program, the Annotated Code of Maryland, Natural Resources Article §§ 8-1801 et seq. ("Critical Area Act"), and the criteria, rules and regulations contained in the Code of Maryland Regulations ("COMAR") 27.01.01 et seq.; and

WHEREAS, the Board of Appeals is responsible for performing certain functions under Cecil County's Critical Area program, including review and approval of variances to the Critical Area program for development projects in the Critical Area; and

WHEREAS, the Critical Area Commission is responsible for oversight of Cecil County's implementation of the County's Critical Area Program pursuant to the Critical Area Act § 8-1801 (b)(2); and

WHEREAS, in an exercise of its oversight responsibility, Critical Area Commission voted on October 3, 2007, pursuant to the Critical Area Act § 8-1809 (1), to declare certain provisions of Cecil County's Critical Area program to be in conflict with the Critical Area Act and the Commission's criteria. The Commission notified the County of these deficiencies by letter from the Critical Area Commission Chair to Cecil County

dated October 9, 2007 (attached to this Agreement as Exhibit A and incorporated herein by reference); and

WHEREAS, as part of the Critical Area Commission Chair's notification to Cecil County on October 9, 2007, the Commission required certain provisions of the County's Critical Area program to be amended, and, until the identified deficiencies were corrected, "the County may not consider variances for new development or redevelopment in the Buffer Exemption Area"; and

WHEREAS, the Critical Area Act § 8-1809 (l)(3) provides that any "local project approvals granted under a part of a program that the Commission has determined to be deficient shall be null and void after notice of the deficiency;" and

WHEREAS, the Board of Appeals issued a written decision ("Decision") in Local Case No. 3409 (Eustace Mita) on August 27, 2008, purporting to grant approval of a variance for new development in Cecil County's Critical Area Buffer Exemption Area; and

WHEREAS, the Critical Area Commission's counsel notified the Board of Appeals and Cecil County by letter of September 29, 2008 (attached to this Agreement as Exhibit B and incorporated herein by reference) that the Board's Decision in Case No. 3409 is null and void by operation of the Critical Area Act; and

WHEREAS, in August, 2008, the Cecil County Commissioners enacted amendments to sections of the Cecil County Zoning Ordinance to address the issues identified in the Critical Area Commission's letter of October 9, 2007, and the County submitted the ordinance changes to the Critical Area Commission for review and approval; and

WHEREAS, pursuant to her authority under the Critical Area Act §§ 8-1809 (h) and 8-1809 (p), the Critical Area Commission Chair determined that the Cecil County ordinance changes could be processed as a "program refinement"; and

WHEREAS, at the regular business meeting of the full Critical Area Commission on October 1, 2008, the Commission considered the Chair's determination of refinement, and the Commission recommended that the Chair approve the definitions and text changes consistent with the Commission's Staff report; and

WHEREAS, at the regular business meeting of the full Critical Area Commission on October 1, 2008, the Commission voted to continue the sanction against Cecil County's Critical Area Program pending the Chair's obtaining additional information from the County Commissioners and the Board of Appeals regarding the Board's Decision in Case. No. 3409, with the Chair's final decision to be made within 10 working days as provided by the Critical Area Act §8-1809 (p); and

WHEREAS, Cecil County and the Chair have met and exchanged pertinent information, and have expressed their mutual desire to achieve the final approval of the Cecil County

Critical Area program refinement through the fulfillment of all terms and conditions of this Memorandum of Agreement as set forth below.

NOW THEREFORE, in consideration of the mutual promises, covenants, and undertakings stated herein, the receipt and sufficiency of all of which are hereby acknowledged, Cecil County, the Board of Appeals, and the Critical Area Commission Chair agree as follows:

1. The August 27, 2008 Decision of the Board of Appeals in Case No. 3409 is null and void by operation of law.
2. The Cecil County Staff shall notify the Board of Appeals in writing by October 16, 2008 that, because of the action of the Critical Area Commission on October 9, 2007, the Board was without authority to hear or to decide Critical Area variance cases involving the provisions of the County Code cited by the Critical Area Commission in Exhibit A. This written notification will include a request by the County that, at the next official meeting of the Board, the Board take official action to rescind, or otherwise to declare as null and void, the Decision in Case No. 3409.
3. The County Staff shall provide a copy of the written notification described in paragraph 2, above, to the Critical Area Commission Chair by October 16, 2008.
4. The Chairman of the Board of Appeals agrees that he will place on the agenda for the next regularly scheduled Board Meeting the notification and request from the County as described in paragraph 2, above, and that the Chair will call this matter for a vote of the Board of Appeals.
5. If the Board of Appeals approves a motion to rescind, or to otherwise declare as null and void, the Decision in Case No. 3409, Cecil County shall immediately provide to the Critical Area Commission Chair a written copy of that approval.
6. Within five working days of receipt of the Board's written rescission of the Decision in Case No. 3409 (or declaration that the Decision is null and void by operation of law), the Critical Area Commission Chair shall notify Cecil County that the condition of approval of the Refinement as described in the Chair's letter of October 16, 2008 (attached hereto as Exhibit C and incorporated herein by reference) has been fulfilled.
7. If the Board of Appeals fails to approve a motion to rescind, or to otherwise declare as null and void the Decision in Case No. 3409, Cecil County and the Critical Area Commission Chair acknowledge and agree that the condition of approval of the Refinement has not been fulfilled and that Cecil County's Critical Area program remains deficient, and under sanction, until the identified deficiency is corrected.
8. The parties agree that Time is of the Essence, and that this Agreement shall be executed by all signatories no later than the close of business on October 16, 2008.
9. Notice required under this Agreement shall be sufficient if sent by U.S. mail to the representative of each party identified below:

County Commissioners of Cecil County:

Hon. William C. Manlove, President
Cecil County Commissioners
County Administration Building
200 Chesapeake Blvd. Suite 2100
Elkton, Maryland 21921

Board of Zoning Appeals:

Mr. David Willis, Chairman
Cecil County Board of Zoning Appeals
County Administration Building
200 Chesapeake Blvd. Suite 2100
Elkton, Maryland 21921

Chair, Critical Area Commission:

Hon. Margaret G. McHale, Chair
Critical Area Commission for the Chesapeake and Atlantic Coastal Bays
1804 West Street Suite 100
Annapolis, Maryland 21401

10. Each party represents that the person signing below on behalf of that party is authorized to do so.

WITNESS/ATTEST:**BOARD OF COUNTY COMMISSIONERS**

By: _____

W. C. Manlove
William C. Manlove, President

BOARD OF ZONING APPEALS

By: _____

David Willis, Jr.
David Willis, Chairman

CRITICAL AREA COMMISSION

By: _____

Margaret G. McHale, Chair

Approved as to form and legal sufficiency, on this _____ day of _____, 2008, Office of the Attorney General, by _____, Assistant Attorney General

County Commissioners of Cecil County:

Hon. William C. Manlove, President
Cecil County Commissioners
County Administration Building
200 Chesapeake Blvd. Suite 2100
Elkton, Maryland 21921

Board of Zoning Appeals:

Mr. David Willis, Chairman
Cecil County Board of Zoning Appeals
County Administration Building
200 Chesapeake Blvd. Suite 2100
Elkton, Maryland 21921

Chair, Critical Area Commission:

Hon. Margaret G. McHale, Chair
Critical Area Commission for the Chesapeake and Atlantic Coastal Bays
1804 West Street Suite 100
Annapolis, Maryland 21401

10. Each party represents that the person signing below on behalf of that party is authorized to do so.

WITNESS/ATTEST:

BOARD OF COUNTY COMMISSIONERS

By: _____

William C. Manlove, President

BOARD OF ZONING APPEALS

By: _____

David Willis, Chairman

CRITICAL AREA COMMISSION

By: _____

Margaret G. McHale, Chair

Dorothy A. Smith

Approved as to form and legal sufficiency, on this 11th day of October, 2008, Office of the Attorney General, by William E. Davis, Assistant Attorney General.

Vice President Mark H. Guns, District 5

Commissioner Rebecca J. Demmler, District 2

Commissioner Brian Lockhart, District 3

Commissioner Wayne L. Tome, Sr., District 4

Alfred C. Wein, Jr.
County Administrator

Eric Sennstrom, AICP, Director
410.996.5220
410.996.5225

County Information
410.996.5200
410.658.4441



CECIL COUNTY GOVERNMENT
Department of Planning and Zoning
200 Chesapeake Boulevard, Suite 2300, Elkton, MD 21921

16 October 2008

Mr. David Willis, Chairman
Cecil County Board of Appeals
County Administration Building
200 Chesapeake Boulevard, Suite 2300
Elkton, Maryland 21921

RE: Recision of Mita Variance, Case Number 3409

Dear Mr. Willis:

As you know, on 29 September 2008, Marianne E. Dise, Principal Counsel for the Maryland Critical Area Commission, wrote us that the Mita Variance, Case Number 3409, on 27 August 2008, to be null and void. The issue related to sanctions that had been imposed on the County by the Maryland Critical Area Commission, per their letter of notification, signed by Margaret McHale, Chair, on 9 October 2007.

As you will recall, we had postponed any decision on that variance application pending resolution of said sanctions. Only after we had conducted hearings on the text amendments to the Zoning Ordinance by the Planning Commission and the Board of County Commissioners, and only after the Board of County Commissioners had enacted said text amendments to the Zoning Ordinance, and only after the Maryland Critical Area Commission had been so notified was the Mita Variance officially acted upon by the Board of Appeals. We thought that action, under that sequence of events, to be lawful.

Subsequently, after discussion with the Maryland Critical Area Commission Chair, Counsel, and Director, we now concur that either the decision should have explicitly stated, as was implicitly understood, that the decision would be null and void until the formal lifting of said sanctions by the Maryland Critical Area Commission Chair, or the action by the Board of Appeals should have been delayed until only after receipt of the official notification of the lifting of said sanctions by the Maryland Critical Area Commission Chair.

Date	10/16/08	# of pages	12
From	TO: MARIANNE DISE	County	CECIL COUNTY
Co./Dept	CAC	Phone #	
Fax #	410-974-5338		

Therefore, pursuant to a Memorandum of Agreement between the County Commissioners of Cecil County, the Cecil County Board of Appeals, and the Chair of the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays, this letter serves as formal notification that the 27 August 2008 decision of the Board of Appeals in Case Number 3409 is null and void by operation of law.

This letter further serves two purposes. First, it serves as formal notification to the Board of Appeals that because of the action of the Maryland Critical Area Commission on 9 October 2007, the Board was without authority to hear or to decide Critical Area variance case involving the provision of the County Code cited by the Maryland Critical Area Commission in said notification of 9 October 2007. Second, it serves as a request that, at the next official meeting of the Board of Appeals, the Board take official action to rescind, or otherwise declare null and void, the 27 August 2008 decision in Case Number 3409.

We sincerely regret the confusion.

Sincerely,



Eric S. Sennstrom, AICP
Director

cc: President William C. Manlove, Board of County Commissioners
Clifford I. Houston, Zoning Administrator

President William C. Manlove, District 1
Vice President Mark H. Guns, District 5
Commissioner Rebecca J. Demmler, District 2
Commissioner Brian Lockhart, District 3
Commissioner Wayne L. Tome, Sr., District 4



Alfred C. Wein, Jr.
County Administrator

Eric Sennstrom, AICP, Director
410.996.5220
410.996.5225

County Information
410.996.5200
410.658.4041

CECIL COUNTY GOVERNMENT
Department of Planning and Zoning
200 Chesapeake Boulevard, Suite 2300, Elkton, MD 21921

29 October 2008

Marianne E. Dise
Assistant Attorney General
Principal Counsel
Maryland Critical Area Commission
1804 West Street, Suite 100
Annapolis, Maryland 21401

RE: Mita (Case # 3409) Recision Opinion

Dear Ms. Dise:

Enclosed herewith please find a copy of the signed Recision Opinion for the Mita (Case # 3409) Variance for your records. In addition, another copy will be submitted as part of Cecil County's FY 2009 second quarter report in January.

If you have any questions, then please call.

Sincerely,

Anthony J. Di Giacomo, AICP
Principal Planner

cc: Eric S. Sennstrom, AICP, Director
Office of Planning & Zoning

Enclosure

HARD COPY TO BE MAILED

Post-it Fax Note	7671	Date	10/29/08	# of Pages	3
To	MARIANNE E. DISE, ESQ.	From	ANTHONY J. GIACOMO		
CO. OF	CRITICAL AREA COMMISSION	Co.	CECIL COUNTY DPZ		
Phone #		Phone #	410-996-5220		
Fax #	410-996-5338	Fax #			

IN THE MATTER OF
THE APPLICATION OF
EUSTACE W. MITA
(Variance)

BEFORE THE CECIL COUNTY
BOARD OF APPEALS
FILE NO.: 3409

SUPPLEMENTAL OPINION

On July 28, 2008 the Cecil County Board of Appeals heard testimony and received evidence in support of an application filed on behalf of Eustace W. Mita for a variance from the Zoning Ordinance pertaining to the critical area buffer requirements within the 110' buffer zone. This application was for construction purposes on lot 9, on parcel 1117 on tax map 31, in the Fifth Election District, in an area presently zoned Suburban Residential (SR). For the reasons cited in its original Opinion dated August 27, 2008 the Board of Appeals granted the requested variance.

The Critical Area Commission for the Chesapeake and Atlantic Coastal Bays previously voted on October 11, 2007 to notify Cecil County that certain provisions of its Critical Area Program were deficient under Maryland law. Under Maryland law from the date of the above action on the part of the Critical Area Commission "local project approvals granted under a part of a program that the Commission has determined to be deficient shall be null and void after notice of the deficiency." Natural Resources Article, Section 8-1809 (1)(3).

As a result of such action by the Critical Area Commission the Board hereby finds that its earlier action in granting the above variance application is null and void as the Board did not have authority to grant the application pending Ordinance amendments consistent with Maryland law.

KEITH A. BAYNES
ATTORNEY AT LAW
10 EAST MAIN STREET
ELKTON, MD 21921
410-398-6333

Upon such finding the application for variance is hereby rescinded and declared to be null and void.

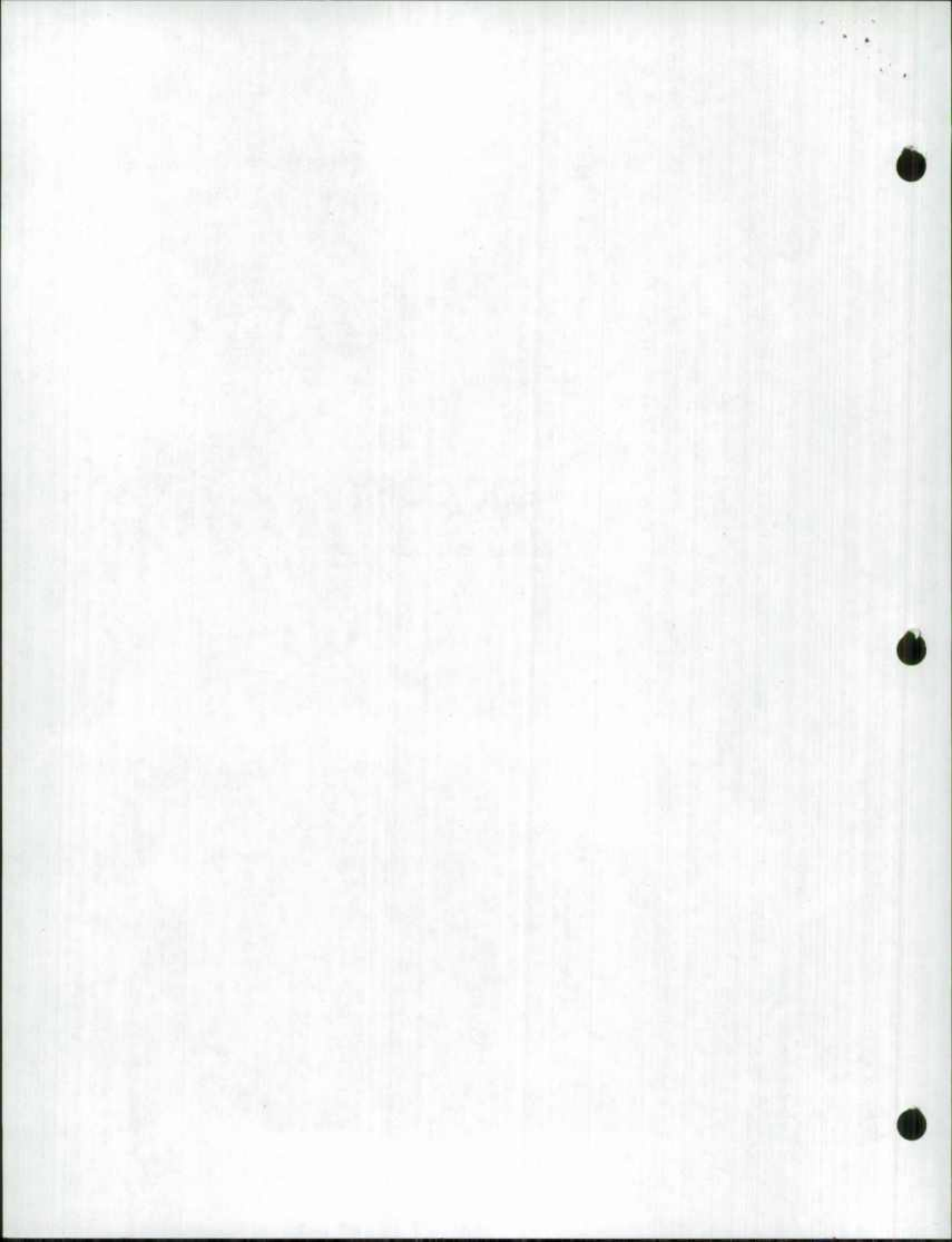
Date: 10/28/08

David Willis
David Willis, Chairman

TRUE COPY

Jan Dempsey 10-29-08

KEITH A. BAYNES
ATTORNEY AT LAW
10 EAST MAIN STREET
ELKTON, MD 21921
410-398-6333



Hoerger, Lisa

From: Delve, Jennifer

Sent: Monday, October 20, 2008 3:12 PM

To: Zach Smith; Aimee Dailey; Amber Widmayer; Amy Moredock; Ann Roane; Bill Watson; Cecilia Lammers; Chandler, LeeAnne; Charles Rice; Chris McCabe; Chris Soldano; Dave Brownlee; Donald Bautz; Duncan Stuart; Elisa DeFlaux; Frank Mckenzie; Gail Blazer; Gail Owings; Gary Letteron; Glenn Shaffer; Haitham Hijazi; Helen Spinelli; Holly Tompkins; J. Henderson; Jackie Naylor; Janet Davis; Jenn Ballard; Jesse Houston; Jimmy Sharp; Julie Roberts; Karen Wigger; Kate Schmidt; Kathleen Freeman; Kelly Krinetz; Kelly Seebold; Kenneth Hranicky; Kerrie Gallo; Larry Knapp; Lisa Hoerger; Lynn Thomas; Margaret McHale; Marianne Dize; Johnson, Marshall; Mary Kay Verdery; Mary Owens; Mary Rea; Michael Bojokles; Mike Bonsteel; Kelly, Nick; 'northbeach@chesapeake.net'; Pam Lucas; Pat Farr; Pat Pudelnkewicz; Paul Dennis; Regina Esslinger; Rey DeGuzman; Robin Munnikhuysen; Hurley, Roby; Rodney Banks; Roxanna Whitt; Ryan Hicks; Sally Nash; Sandra Canedo; Serey, Ren; Steve Cohoon; Steve Dodd; Sue Veith; Susan Hubbard; Suzie Schappert; Tom Burke; Tom Lawton; Tom Smith; Tony DiGiacomo; Yvonne Chaillet

Subject: Draft Regulations

Dear Local Government:

As you know, House Bill 1253 requires that all growth allocation submittals from local governments include specific standards and factors as part of the approval process. In order to establish submittal requirements that are consistent across the jurisdictions, the Commission has devised a list of required submittal information and documents. This list, which will be formally proposed in regulation, will help local programs to know what kind of information is expected when a request for growth allocation is submitted, and it will be used by Commission staff to determine when a request for growth allocation can be formally accepted for processing. Please note that many of the submittal requirements on this list were already part of a growth allocation submittal.

The Commission has reviewed a preliminary draft of this list, and we are now sending it out to all affected local governments for feedback. The benefit of your experience of the growth allocation process can only make this regulation better. Therefore, if you have any comments on the enclosed draft regulation, please return those comments to Lisa Hoerger at lhoerger@dnr.state.md.us by Monday, November 17, 2008. Commission staff plans to bring the final version of this proposal to the Commission for a vote at its meeting on December 3, 2008. In the meantime, Commission staff will briefly discuss this topic as part of the local planner's meeting agenda for this Thursday, October 23, 2008; any comments will be welcome at that time as well.

As always, please do not hesitate to contact our staff to help answer any questions or concerns you have regarding this aspect of the new law. We thank you for all your efforts during this transition process. I look forward to seeing you this Thursday.

Sincerely,

Margaret M. McHale
Chair

11/3/2008

Proposed Regulations – Growth Allocation Submittal Requirements

DRAFT

November 20, 2008

COMAR 27.01.02.07 (Will change the current numbering for .07 Grandfathering to .08)

27 Critical Area Commission for the Chesapeake and Atlantic Coastal Bays

01 Criteria for Local Critical Area Program Development

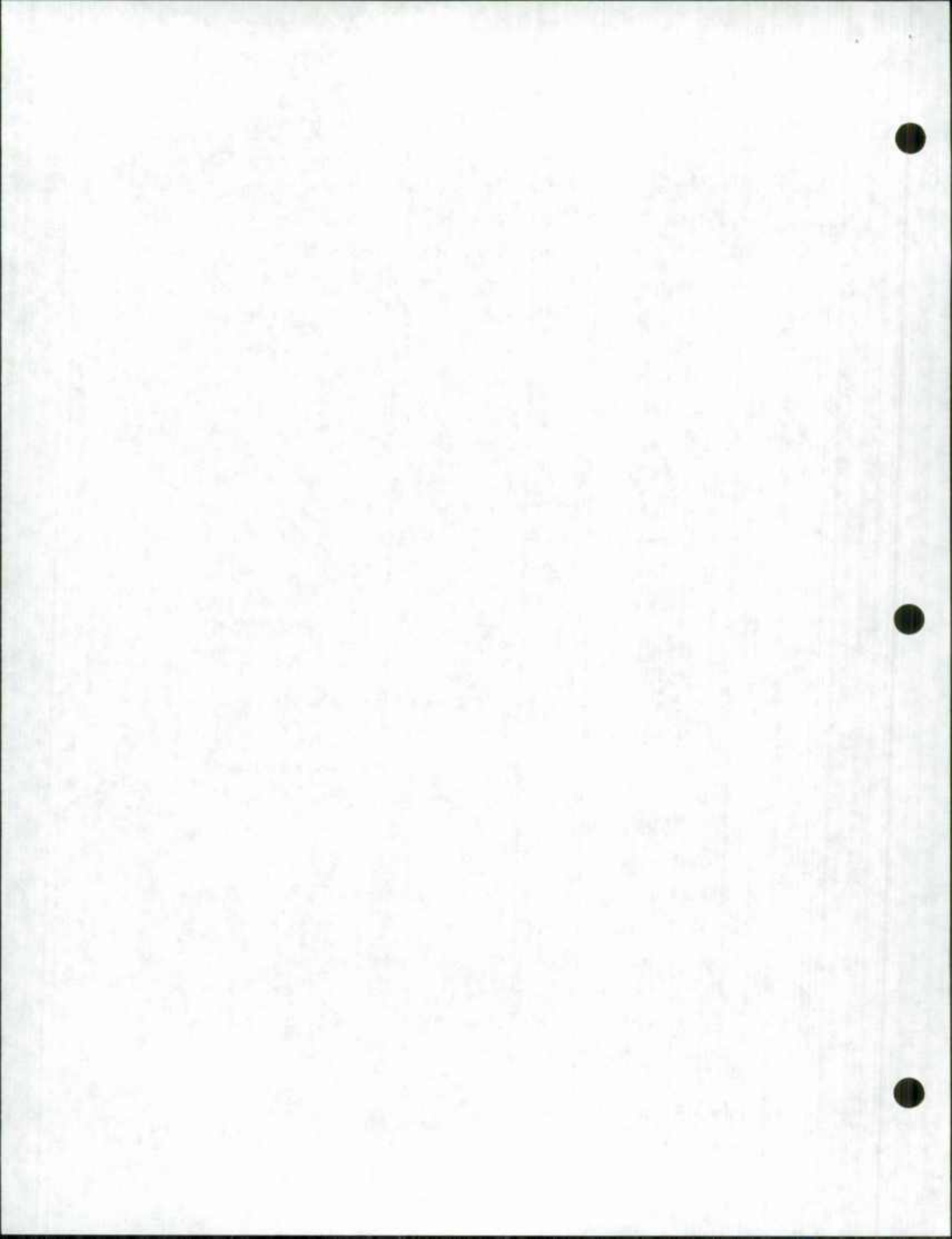
02 Development in the Critical Area

.07 Growth Allocation Submittal Requirements

A. The Commission may not accept a growth allocation request for processing unless all of the following information/items/documents are provided:

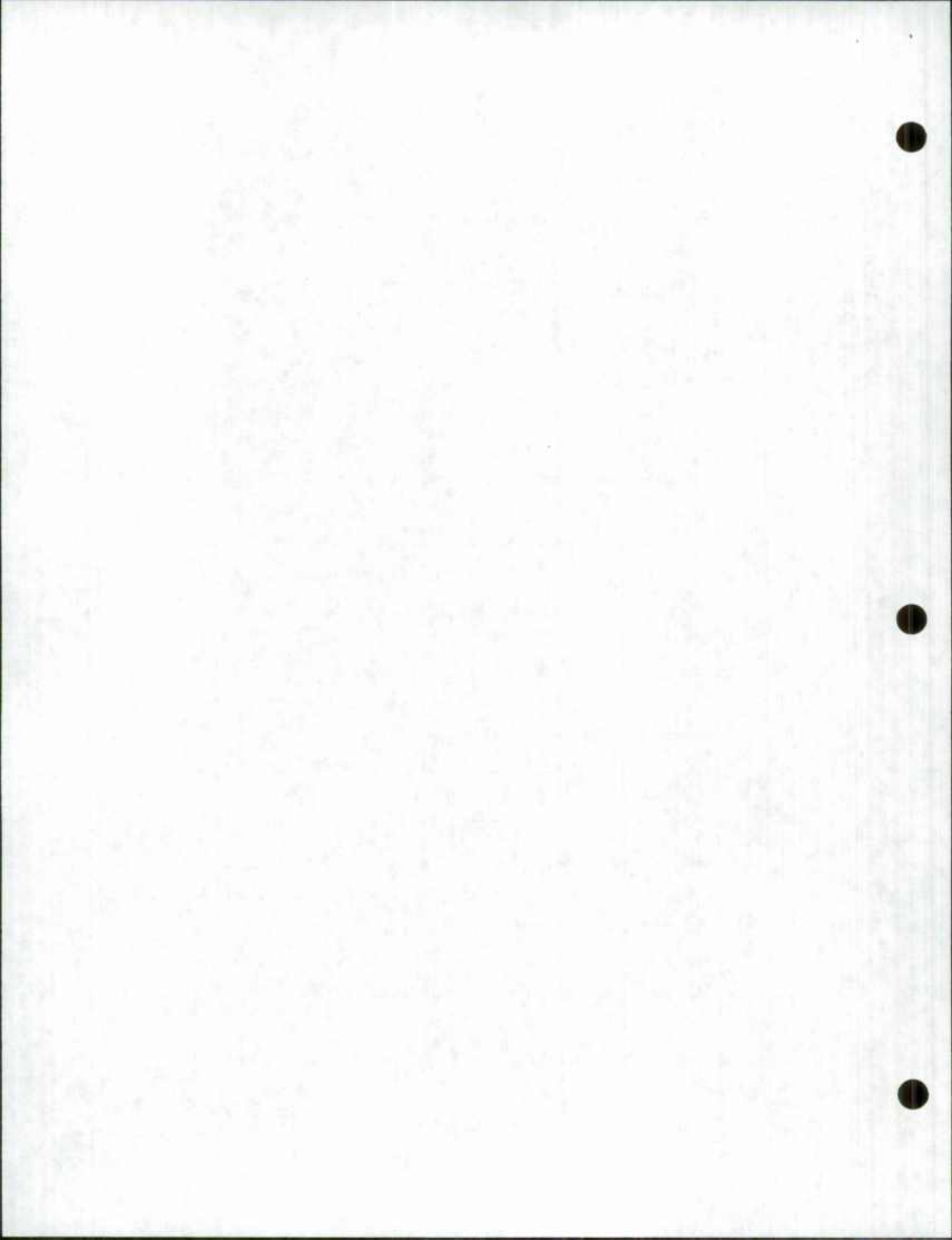
1. Information and documentation relevant to how the local jurisdiction determined that the project met the standards listed in Natural Resources Article 8-1808.1(c)(1) in relation to the growth allocation request;
2. Information and documentation addressing those environmental, planning and economic factors to be considered by the Commission found in Natural Resources Article Section 1808.1(c)(3) in relation to the growth allocation request;
3. A conceptual site development plan;
4. An environmental features map;
5. An environmental report demonstrating that the project has been designed and can be constructed so as to comply with all requirements of the proposed Critical Area classification, including the lot coverage limits in the Limited Development Area and Resource Conservation Area and the 10% pollutant reduction rule in the Intensely Developed Area;
6. Preliminary review and comment from the appropriate units of the Department of the Environment, Department of Natural Resources and the Army Corps of Engineers, for the resources specified in §F below;
7. A Critical Area map showing the land area the local jurisdiction proposes to change; and

8. Confirmation the Critical Area classification of this land area equals the requested number of acres proposed for change.
- B. The conceptual site development plan and environmental features map set forth in §A(3) and §A(4) of this regulation shall include the following:
1. A vicinity map with the project site clearly identified;
 2. The project boundary or limits of disturbance;
 3. A site plan with a scale provided at 1"=10', 1"=20', 1"=30', 1"=40', 1"=50', 1"= 60', or 1"=100';
 4. Orientation;
 5. Project name and location;
 6. Existing parcel and tract boundaries or lot lines;
 7. Critical Area boundary, including current and proposed land classifications and the land classification of all lots or parcels considered adjacent to the project site;
 8. Development area boundaries, including any proposed development envelopes;
 9. One hundred-year floodplain boundary;
 10. Field-run topography;
 11. Vegetative cover information by acres or square footage, including field determination of existing forest and developed woodland cover, location of proposed forest and developed woodland clearing, and location of proposed afforestation and reforestation areas when applicable;
 12. Soil features, including soil type, area of hydric soils, and area of highly erodible soils;
 13. Field determinations of intermittent and perennial tributary streams;
 14. Minimum 100-foot Buffer from the mean high water line of tidal waters or the landward edge of tidal wetlands and tributary streams,
 15. Expanded Buffer to include contiguous slopes 15% or greater, hydric soils and highly erodible soils, as required within a local program or within COMAR 27.01.09.01;

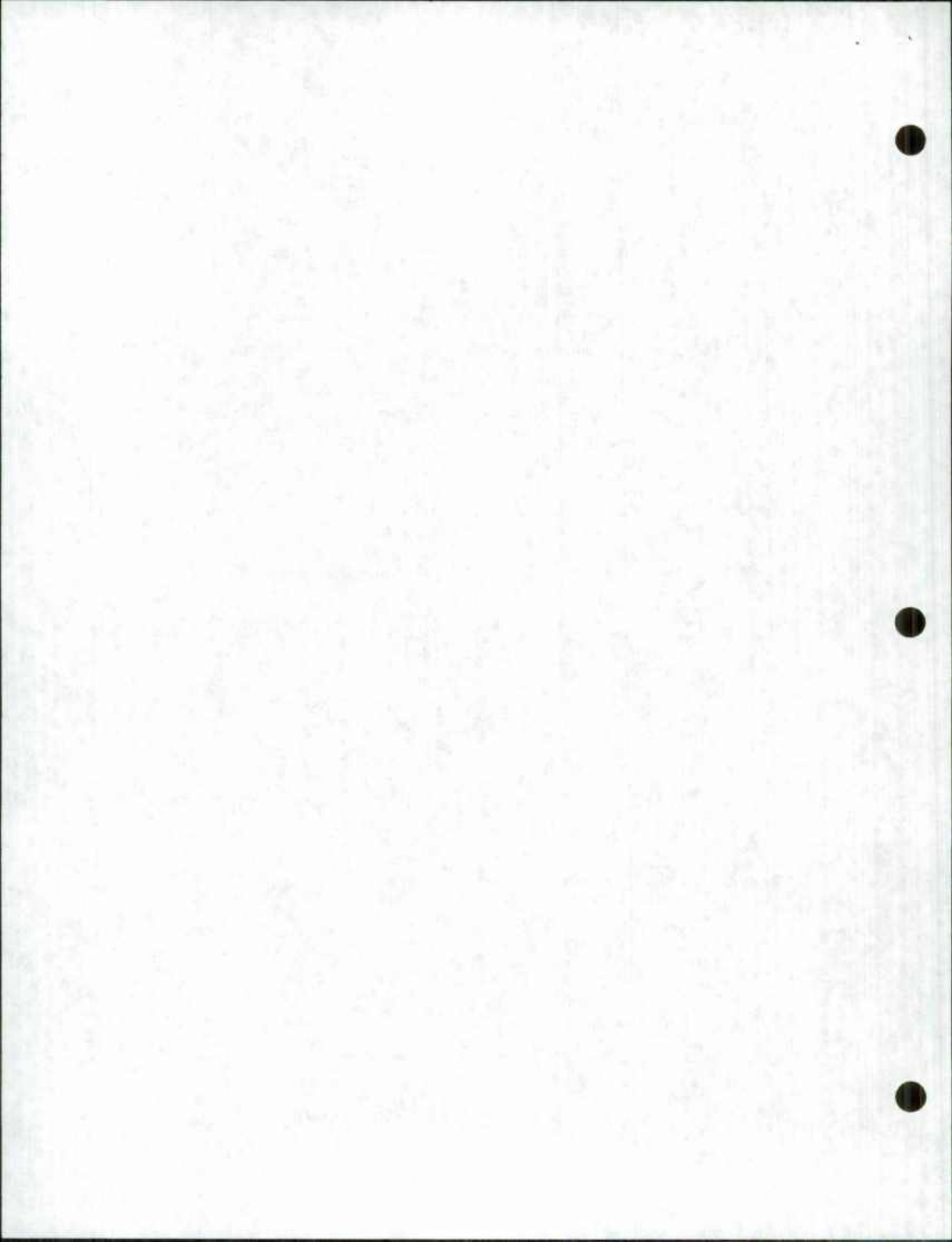


16. The 300-foot setback when converting from a Resource Conservation Area to either a Limited Development Area or an Intensely Developed Area;
17. Field delineated location and extent of nontidal wetlands and the 25-foot buffer from nontidal wetlands;
18. Field delineated location and extent of tidal wetlands, including delineation of State versus private tidal wetland boundaries if applicable;
19. Plant and Wildlife Habitat Areas including colonial water bird nesting sites, historic waterfowl staging and concentration areas, riparian forest, forest interior dwelling bird habitat, areas of State or local significance, and natural heritage areas;
20. Habitat of Threatened and Endangered Species, including species in need of conservation;
21. Anadromous fish propagation waters;
22. Existing and proposed area of lot coverage, including identification of buildings, roads, parking lots, and all other areas contributing to lot coverage;
23. Other proposed development features, including outlots, storm drains and outfalls, utility connections, septic systems, stormwater management systems, shore erosion control structures, and piers;
24. Existing and proposed mitigation areas, including those for forest, developed woodland, wetland, Buffer, and other Habitat Protection Area impacts;
25. When present on the property, identification and location of agricultural lands, surface mining sites, natural parks, dredging activity and dredge material disposal areas; and
26. When present, the boundary and area of any existing easements, as well as information identifying the easement holder.

C. The environmental report set forth in §A(5) of this regulation shall include the following:



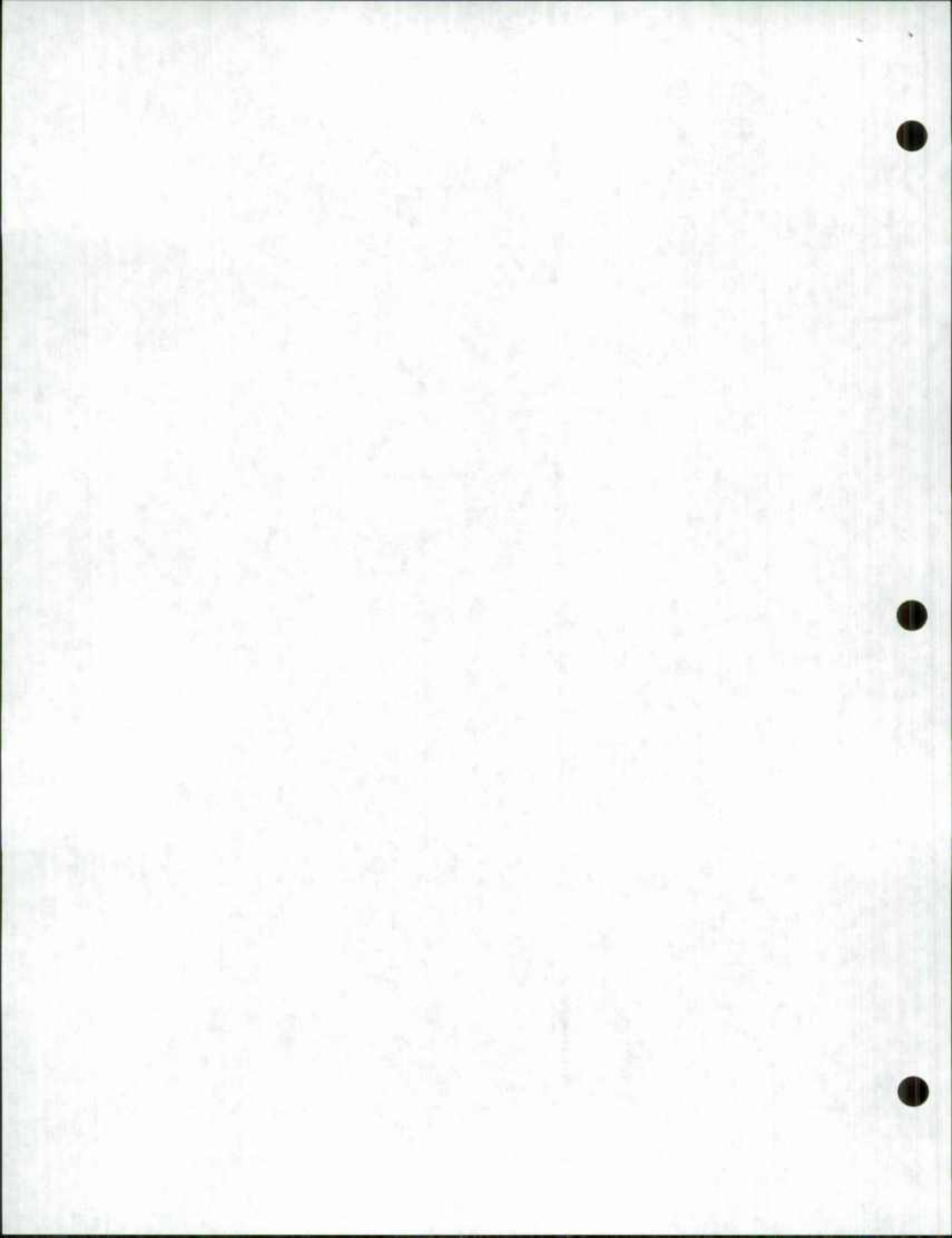
1. Project description;
2. Subdivision history since December 1, 1985 in the Chesapeake Bay Critical Area and since June 1, 2002 in the Atlantic Coastal Bays Critical Area;
3. A brief narrative describing the project type, including industrial, residential, commercial, institutional, or port-related, as it relates to the need to change the Critical Area classification, and which describes how the growth allocation supports the jurisdiction's overall planning goals, including reference to the relevant sections of the local jurisdiction's adopted comprehensive and water and sewer plans, as well as the adopted zoning ordinance;
4. Total acreage in the Critical Area;
5. Total acreage for which Critical Area designation is proposed to be changed;
6. Total forest, developed woodland, and vegetated area proposed to be cleared;
7. Method and description of proposed stormwater quality and quantity management;
8. In the Intensely Developed Area, 10% pollutant reduction rule compliance, including worksheets and all supporting documentation;
9. Soil erosion and sediment control measures and implementation strategy;
10. In the Limited Development Area, existing and proposed lot coverage information calculated by square feet of coverage for each lot and for the site as a whole;
11. Mitigation required for clearing of forest area, developed woodland, or vegetation in accordance with the requirements of COMAR 27.01.03 or with the local jurisdiction's Critical Area Program;
12. When applicable, the 15 percent afforested area in the Limited Development Area and the Resource Conservation Area in the Chesapeake Bay Critical Area and in all land classifications in the Coastal Bays Critical Area;



13. Local zoning district description;
 14. A Buffer Management Plan if:
 - (a) The Buffer is required to be established on a development site,
 - (b) A proposed development activity impacts the Buffer, or
 - (c) The removal of trees or vegetation, including invasive species management, in the Buffer is proposed;
 15. A Habitat Protection Plan if the proposed development will impact an identified Habitat Protection Area; and
 16. A proposed planting plan showing the plantings required to establish the Buffer or as mitigation for proposed impacts including the size, species, and location of all proposed plantings.
- D. If Regulation §C14 applies, the local jurisdiction shall require the applicant to prepare a Buffer Management Plan showing the following:
1. Existing vegetation within the Buffer;
 2. Any vegetation in the Buffer that is proposed to be removed;
 3. Square feet of disturbance in the Buffer associated with a development activity;
 4. Any written descriptions, specifications, and protective agreements necessary to ensure implementation of the Buffer Management Plan; and
 5. Bonding or other financial sureties to ensure long-term protection and maintenance of vegetation in the Buffer.
- E. If regulation §C15 applies, a Habitat Protection Plan that:
1. Provides for the protection and conservation of any identified habitat or species as set forth in COMAR 27.01.09 on the project site; and
 2. Based on consultation with the Department of Natural Resources and other appropriate federal and State agencies, includes all protective measures appropriate to provide for long-term conservation.
- F. If §E1 and E2 apply a jurisdiction shall ensure that these measures:
1. Can be implemented on the specific site; and
 2. Include long-term protective agreements, including easements.

E. If present and applicable, the resources identified in §A(6) of this regulation shall include:

1. Rare, threatened and endangered species;
2. Plant and wildlife habitat;
3. Riparian forests;
4. Forest interior dwelling birds;
5. Natural Heritage Areas;
6. Colonial water birds;
7. Submerged aquatic vegetation;
8. Anadromous fish propagation waters;
9. Other aquatic species;
10. Historic waterfowl staging and concentration areas;
11. Tidal and nontidal wetlands; and
12. Historical and cultural resources.



Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor



Margaret G. McHale
Chair

Ren Serey
Executive Director

STATE OF MARYLAND
CRITICAL AREA COMMISSION
CHESAPEAKE AND ATLANTIC COASTAL BAYS

1804 West Street, Suite 100, Annapolis, Maryland 21401
(410) 260-3460 Fax: (410) 974-5338
www.dnr.state.md.us/criticalarea/

November 17, 2008

Senator Roy P. Dyson
PO Box 229
20247 Point Lookout Road, Unit 2
Great Mills, MD 20634-0229

Dear Senator  Dyson:

How are you doing? I hope that, all in all, it has been a productive, yet peaceful, interim for you. I, myself, am in sheer disbelief that it is nearly Thanksgiving ... and that the legislative session is already just around the corner!

In the meantime, though, I want to update you on the status of a set of regulations that we intend to propose formally in the near future – that is, in accordance with your amendment to House Bill 1253 during the 2008 Session, public notice and comment requirements for a State or local government development activity in the Critical Area. Enclosed for your reference please find two drafts of this proposal: the first draft (November 5) is our in-house rendition of these regulations; and the second version (November 10) incorporates changes suggested by our Commission workgroup at the November 5 Commission meeting. We are currently checking with State agencies and local governments regarding their perspective and comments on this latter draft, particularly the administrative and fiscal impacts that may result from Commission members' suggested additions. Likewise, I would appreciate knowing if you have any questions or concerns.

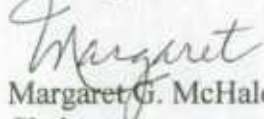
Second, I understand that the Hart cases in St. Mary's County have garnered a fair amount of publicity. In the Circuit Court appeals, please be advised that the Commission has entered an appearance only in the case regarding the issuance or denial of a variance. Consistent with our position before the Board of Appeals, we are opposed to the granting of a variance in this instance. However, likewise consistent with our position before the Board of Appeals, we have not entered an appearance in the case regarding the

Senator Roy P. Dyson
November 17, 2008
Page Two

construction of "abandonment" under local law. We view the latter as an issue in which the Commission does not have an interest and, therefore, our participation would be inappropriate. Also, it is our understanding that all parties have consented to a stay of the variance case pending the resolution of the threshold legal question on the interpretation of local law. Please let me know if you would like to discuss our perspective on either of these cases.

I look forward to seeing you on December 8 when the Commission will be briefing the Critical Area Joint Committee on House Bill 1253 and our implementation activities. Until then, my best wishes to you and yours for a beautiful Thanksgiving holiday!

Sincerely,


Margaret G. McHale
Chair

Enclosures (2)

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor



Margaret G. McHale
Chair

Ren Serey
Executive Director

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November 19, 2008

Mr. Larry Tom
Planning and Zoning Officer
Anne Arundel County
Office of Planning and Zoning
2664 Riva Road, P.O. Box 6675
Annapolis, Maryland 21401

Re: County Bill 67-08

Dear Mr. Tom:

The purpose of this letter is to officially notify you of the Critical Area Commission's action on the above referenced text amendment. On November 5, 2008, the Critical Area Commission concurred with my determination that the above referenced text amendment to the Anne Arundel County Critical Area Program and Zoning Ordinance could be reviewed as a refinement. I approved this change to the County Program on the same date.

This refinement must be reflected in the County's Critical Area Program within 120 days of the date of this letter. Please provide a copy of the updated ordinance and Program document to Commission staff when it is available.

Thank you for providing us with the opportunity to review your text amendment request. If you have any questions, feel free to call me at (410) 260-3460.

Sincerely,

A handwritten signature in cursive script, reading "Margaret McHale".

Margaret McHale
Chair, Critical Area Commission
cc: file

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor



Margaret G. McHale
Chair

Ren Serey
Executive Director

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November 21, 2008

The Honorable Ellen O. Moyer
City Hall
160 Duke of Gloucester Street,
Annapolis, MD 21401

Dear Mayor Moyer:

It hardly seems possible, does it, that the end of 2008 is so soon upon us? Yet, here it is already mid-November, with nearly five months of lived experience "under our belts" regarding House Bill 1253 and its ramifications for local Critical Area programs.

The purpose of this letter is to remind you of two reports due **by January 1, 2009**, under House Bill 1293 (now Chapter 119 of the 2008 Laws of Maryland). Both reports concern proposed local procedures: (1) notice to the Commission of Critical Area projects approvals and denials; and (2) procedures for bringing grandfathered lots into Program conformance including lot consolidation and reconfiguration.

First, as of July 1, 2008, a local Critical Area program must include written provisions, to be approved by the Commission, for notifying the Commission of project approvals or denials. These procedures should specify when Critical Area project approvals or denials are considered "final" and thus will provide for a consistent tracking method for all final Critical Area determinations.

If your program does not include formal ordinance language to comply with this reporting requirement, at a minimum, **you will need to submit a written statement to the Commission by January 1, 2009**. This statement should identify each step that your jurisdiction now follows for the routine processing of Critical Area project approvals and denials (In House Bill 1253, see page 20, lines 19-22; and page 45, lines 27-32.).

Your statement must include the following:

- What constitutes a "final" approval or denial? What action makes it "final"?
- What documentation do you send to notify the Commission that a final decision has been made? (For example, it could be a copy of the final decision, the final plan, or the final plat for subdivision.)

- When do you send this documentation or any other "final" notice – that is, how long after the final determination is made?
- For appeal purposes, what is the deadline for filing an appeal of the final decision?
- Where must an appeal of a final decision be filed? (For example, is it with your Board of Appeals, the circuit court, or another adjudicatory body?)

Procedures for reporting to the Commission will need to be incorporated as an official part of your Critical Area program after the Commission has approved the procedures.

Second, the Critical Area law has always required that a local program include procedures to bring grandfathered lots into conformance with Critical Area Program requirements insofar as possible. In an effort to avoid any "slips in the cracks," House Bill 1253 established a January 1, 2009 deadline for local jurisdictions to send those lot consolidation/reconfiguration procedures to the Commission (See page 17, lines 8-9; page 21, lines 21-34; page 22, lines 1-4; and page 45, lines 27-32).

As of **January 1, 2009**, any existing written procedures used by your local jurisdiction for **lot consolidations or reconfigurations** under the Critical Area law must have been submitted to the Commission. To comply with the requirements of House Bill 1253 (Chapter 119 of the 2008 Laws), these local procedures must ensure that grandfathered lots and lands are brought into conformance with the Critical Area Program "to the extent possible." Thus, all local decisions regarding lot consolidations or reconfigurations must address how the proposed reconfiguration or consolidation has been brought into conformance with the Critical Area law and local program, specifically addressing the protection of water quality and habitat. In the absence of any existing, written procedures, local jurisdictions, at a minimum, need to make written findings regarding: (1) grandfathered status of the lots; (2) factors considered in determining approval; and (3) how each factor ensures that the requirements of the Critical Area law and goals of the program have been met.

We are currently drafting regulations for lot consolidations or reconfiguration and intend to submit them for adoption early in 2009. These draft regulations will be sent out for your comments soon. Until such formal adoption, the above list of findings should provide guidance as to what type of information will be required in this context.

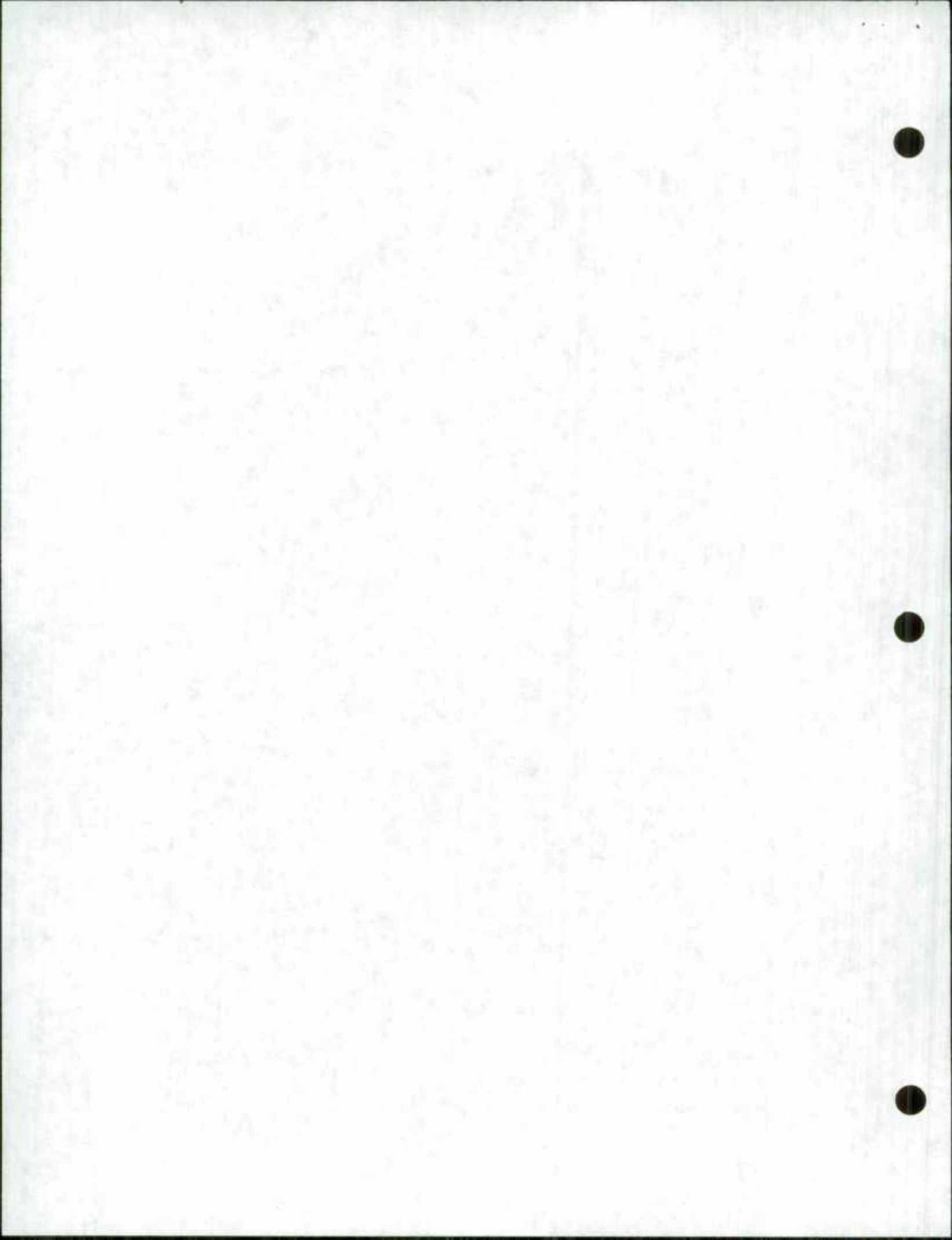
Again, the deadline for submitting notification and lot consolidation or reconfiguration procedures is **January 1, 2009**. Please contact Commission staff should you have any questions in this regard. Thank you for your time and efforts toward resource preservation and program efficiency. My best wishes to you and your family for a very Happy Thanksgiving.

Sincerely,



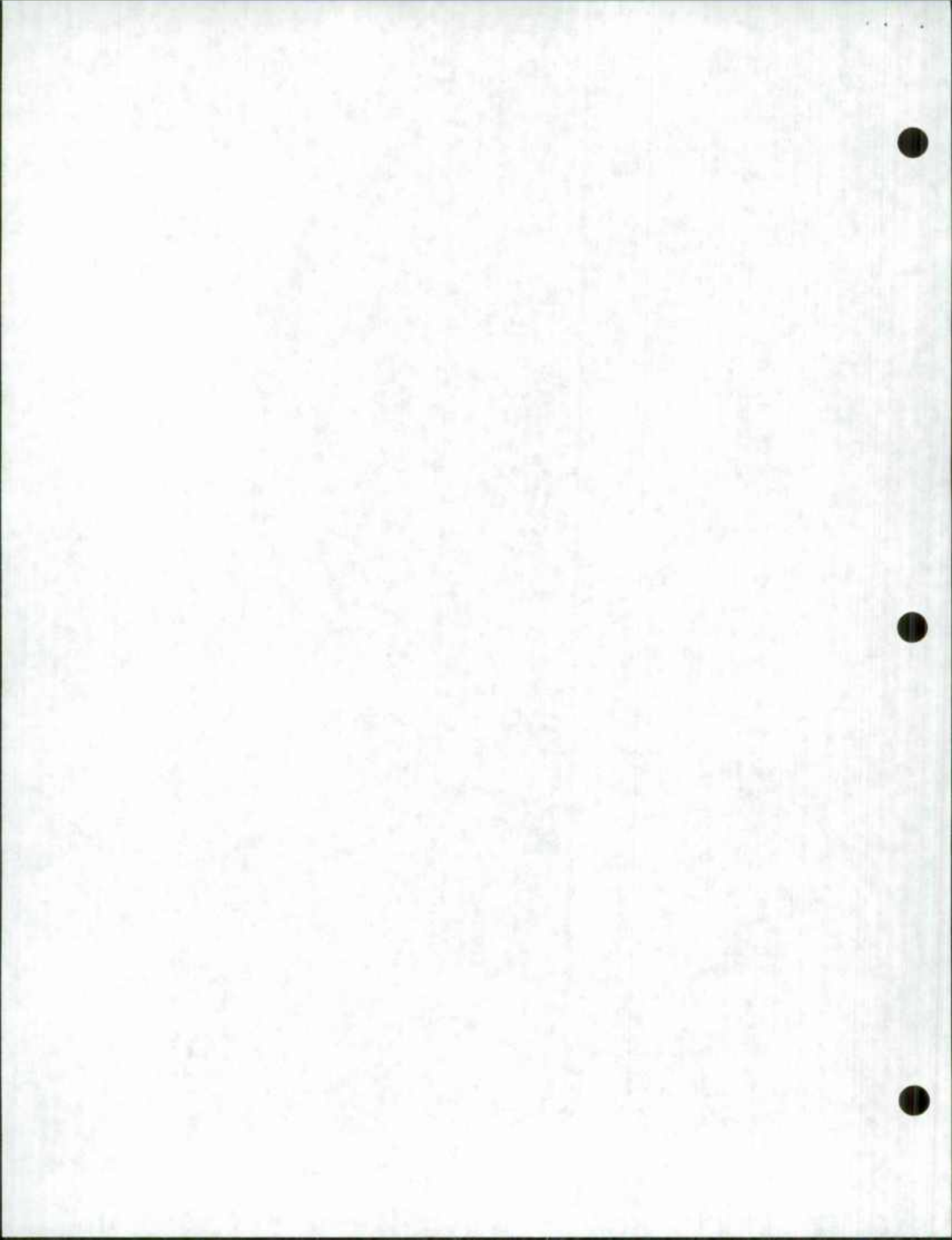
Margaret G. McHale
Chair

Salutation	First	Last
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Mr.	Chris	Soldano
Ms.	Kelly	Krinetz
Mr.	Jonathan	Hodgson, Esq.
Mr.	Arnold	Keller, Jr.
Ms.	Pat	Farr
Mr.	John	Beverungen, Esq.
Mr.	Douglas	McCoach III
Mr.	Duncan	Stuart
Dr.	David	Brownlee
Mr.	Greg	Bowen
Mr.	Emanuel	Demedis, Esq.
Ms.	Tammy	Buckle
Ms.	Crystal	Porter-Dadds
	Ernest	Crofoot, Esq.
Mr.	Eric	Sennstrom
Mr.	Anthony	DiGiacomo
Mr.	Findlay	McCool, Esq.
Mr.	David	Umling
Ms.	Aimee	Dailey
Mr.	Roger	Fink, Esq.
Mr.	Steve	Dodd
Mr.	Michael	Bonsteel
Mr.	Pete	Gutwald
Ms.	Pat	Pudelkewicz
Mr.	Robert	McCord, Esq.
Ms.	Gail	Owings
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Mr.	Thomas	Yeager, Esq.
Dr.	Fern	Piret
Ms.	Susan	Hubbard
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		Pratt Anderson,
Ms.	Stephanie	Esq.
Mr.	Steve	Cohoon
Ms.	Holly	Thompkins
Mr.	Patrick	Thompson, Esq.
Mr.	Denis	Canavan
Ms.	Sue	Veith
Ms.	Christy	Holt Chesser, Esq.
Mr.	Jack	Willing
Mr.	Tom	Lawton
Mr.	Kirk	Simpkins, Esq.

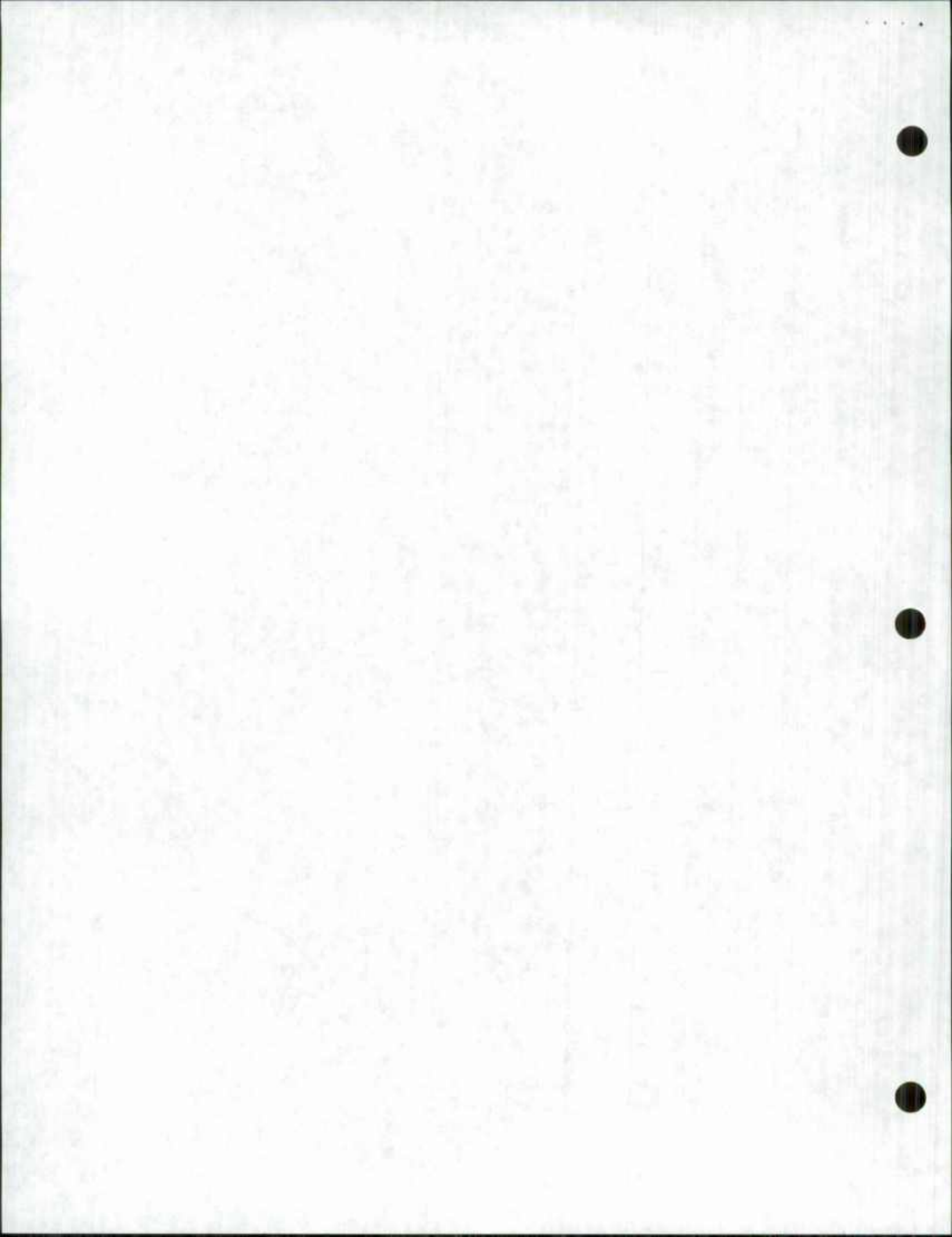


Ms.	Mary Kay	Verdery
Mr.	Michael	Pullen, Esq.
Mr.	John	Lenox
Mr.	Jimmy	Sharp
Mr.	Edgar	Baker, Esq.
Mr.	Ed	Tudor
Ms.	Janet	Davis
Mr.	Chris	McCabe
		Hammong Jr.,
Mr.	Edward	Esq.

Salutation	First	Last
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Mr.	Jon L.	Arason
Ms.	Sally	Nash
Mr.	Shaem	Spencer, Esq
The Honorable	Carolyn C.	Sorge
Mr.	David	Teel
Ms.	Joanne	Hollidge
The Honorable	Cleveland	Rippons
Ms.	Anne	Roane
Mr.	Robert	Collison, Esq.
Mr.	Frank	Ogens
Mr.	Robert	McGrory
Mr.	Chris	Rogers
Mr.	Steve	Kehoe
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Mr.	Henry	Burden
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Ms.
The Honorable

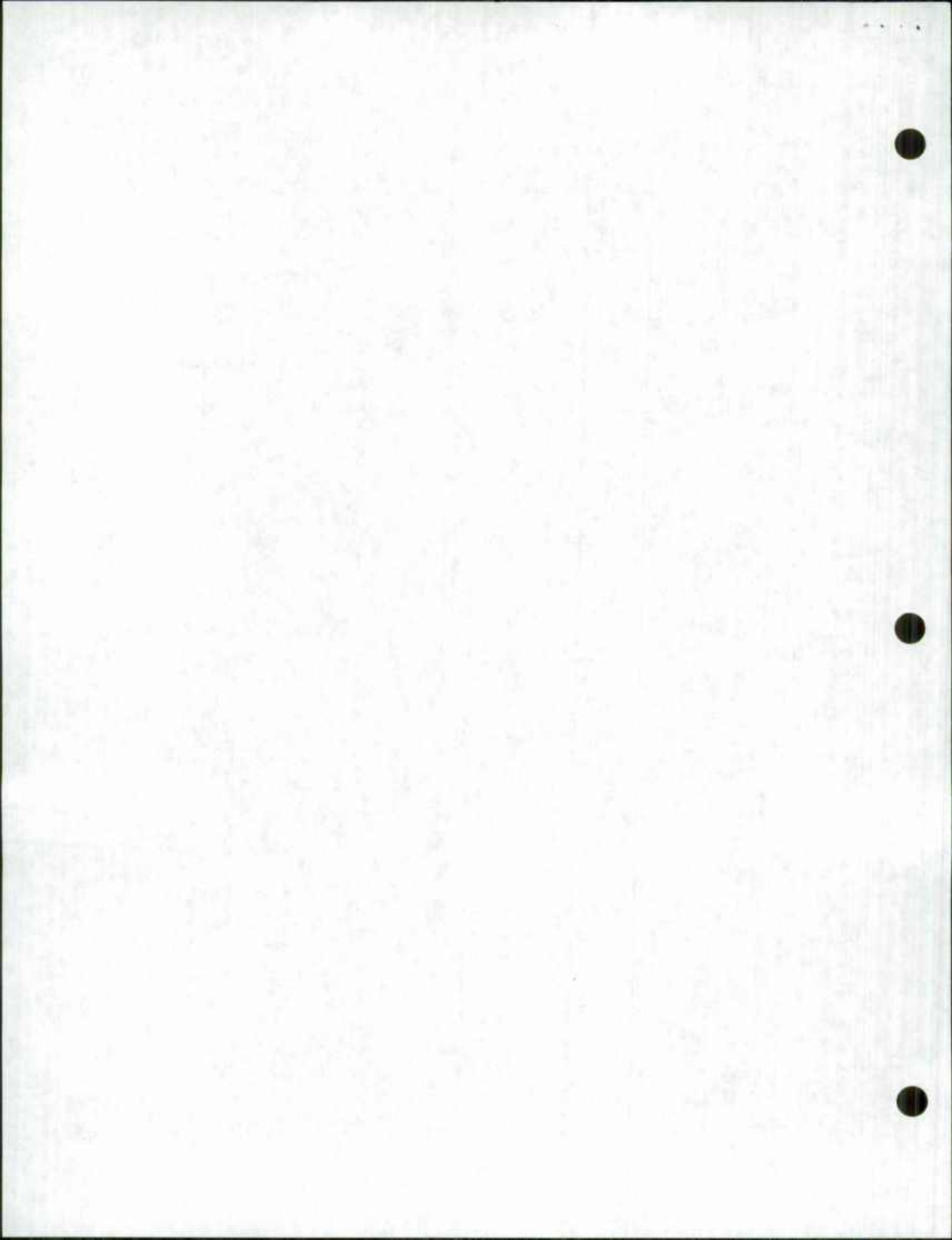
Judy
Stephen
Kelly

Schneider
Mathews
Brewington

Ms
The Honorable

Karen
Russell

Houtman
Brinsfield



Martin O'Malley
Governor

Anthony G. Brown
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Margaret G. McHale
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www.dnr.state.md.us/criticalarea/

November 24, 2008

Mr. Larry Tom
Office of Planning & Zoning
2664 Riva Road
Annapolis, MD 21401

Dear Mr. Tom:

The main purpose of this letter is follow up on my letter of September 26 regarding the lot coverage provisions of House Bill 1253. More specifically, this letter will address two questions that have frequently arisen; it is also a reminder and a "heads up" regarding an important reporting target date that has already passed. Please pass a copy of this correspondence on to all personnel who are involved in the issuance of Critical Area permits in your jurisdiction; the answer to question number 2 may be of particular interest to them.

I. Two Frequent Questions Regarding Lot Coverage

In the course of our meetings with local jurisdictions, two questions have come up on a fairly regular basis – often enough to indicate that these questions are common to a number of local programs and, therefore, should receive a written response that is made available to all. Both questions relate to the transition from the development ceiling under former law, which was in terms of "impervious surface," to the "lot coverage" development ceiling under the new law. These questions and their answers are as follows:

Q: What was the purpose of the sketch entitled "Lot Coverage Plan" found on page 6 of the attachment "Local Government Assistance Guide: Lot Coverage" sent out on September 26?

A: House Bill 1253 established two types of projects in the design phase as of July 1, 2008, that may be exempt from the general lot coverage requirements of the bill. In order to qualify for this exemption, a "pipeline" project must fit into one of these timeframe categories:

- Application for a building or grading permit must be made by October 1, 2008, and the permit must be issued by January 1, 2010; or
- An initial application for development that satisfies all local submittal requirements must be filed by October 1, 2008, and the development plan must receive final approval by July 1, 2010.

(See page 46, lines 10-30.)

If a project does qualify for one of these pipeline exemptions, by July 1, 2010, the applicant must prepare a detailed diagram, called a "lot coverage plan," that the local jurisdiction must likewise have approved by that date. This lot coverage plan demonstrates the designed amounts of impervious surface area, partially pervious surface area, and developed pervious surface area – so as to specify how this grandfathered project will satisfy previous local impervious surface requirements. The purpose of the sketch was merely to illustrate what one of these lot coverage plans might look like. It was not related to

any particular project or any particular component of the new law. It was just a sample, meant as a "heads up" for the future submittal of these plans.

My apology for this misunderstanding. Although my September 26 cover letter referenced this sketch, the explanation did not carry over to the illustration itself, and it should have. Included with this letter today is a revised version of the diagram. Please feel free to follow up with Commission staff if any questions remain.

Q: What is the legal effect of the October 1, 2008 deadlines (mentioned above)? May a project still qualify for exemption if the building/grading permit application or initial development application is filed after October 1, 2008, but the project still meets the applicable January 1/July 1 deadline for permit issuance or final approval?

A: Our attorneys have advised us that October 1, 2008 is a hard and fast application deadline. It may not be waived by a local Critical Area program or by the Critical Area Commission. The only way that the second deadline of January 1, 2010 or July 1, 2010 may even apply is if the applicant has first crossed the threshold of timely meeting the October 1, 2008 application deadline. If that threshold has not been crossed, then it was clear as of October 2, 2008 that the project does not qualify for an exemption and it must comply with all of the new lot coverage requirements under House Bill 1253.

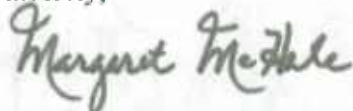
II. Reminder and "Heads Up" Regarding a Reporting Date

This reminder likewise relates to my letter of September 26 and its discussion of the pipeline exemptions above. As you know, impervious surface requirements varied widely before House Bill 1253 took effect on July 1, 2008, and Commission staff therefore needs a written list of the pervious/impervious surface practices and procedures that were in place in your jurisdiction before that date. This list should include those materials for which a local decision about perviousness had been made **before July 1, 2008**. (Grandfathering of any other product or material that could have been considered pervious or semi-pervious at that time, but was never actually recognized as such, is not authorized under House Bill 1253.)

We asked for the list by **Friday, October 31**. My thanks to those who have already sent theirs in, but to date some local programs have not yet responded. If your jurisdiction is one of those for which we have no background information, please respond by **January 1, 2009**. If we do not hear from you by then, it will be our understanding that your jurisdiction had authorized no pervious or semi-pervious products or materials other than those specified under State Program criteria, and, in that case, you will be required to count any other products or materials as fully impervious when you evaluate pipeline projects after January 1, 2009.

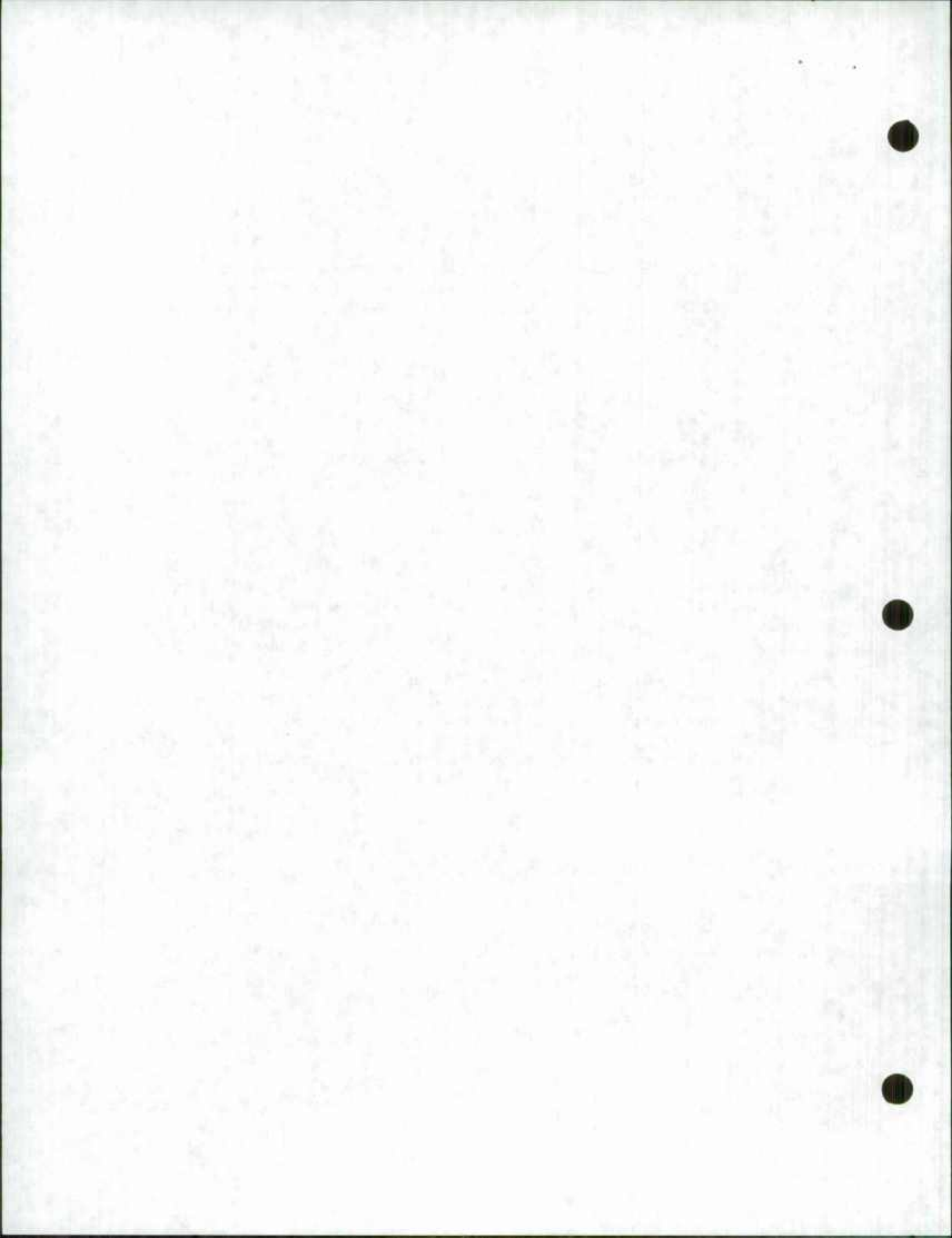
In closing, please be assured of my regard for your continued commitment to improving the water quality and habitat of the Chesapeake and Atlantic Coastal Bays. Your hard work is vital in our race against time to the save the Bays! My best wishes to you and your family for a very Happy Thanksgiving.

Sincerely,

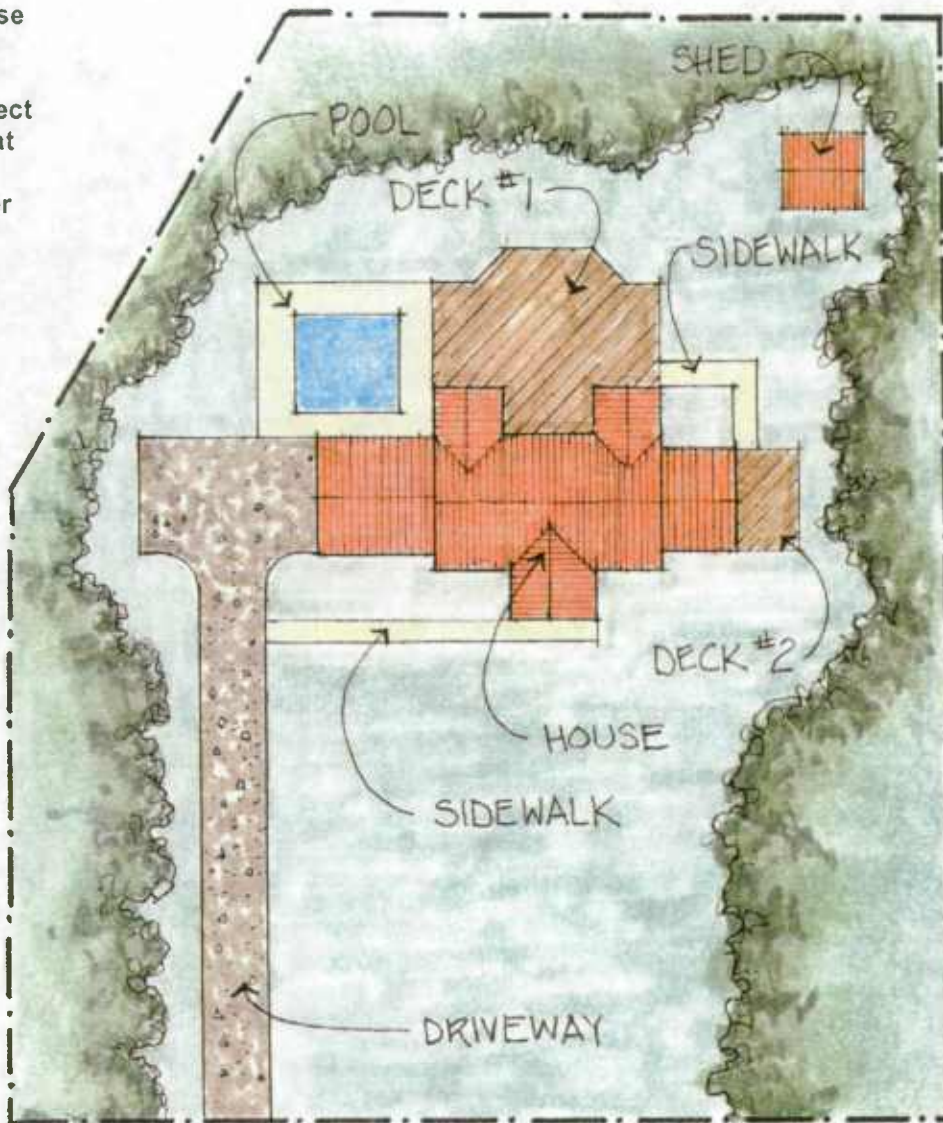


Margaret G. McHale
Chair

Enclosure (1)



NOTE: Sole purpose of this sketch is to illustrate a hypothetical "project in the pipeline" that qualifies for development under local standards applicable before passage of House Bill 1253.



SAMPLE LOT COVERAGE PLAN

SCALE: 1" = 40'-0"

LOT COVERAGE TABLE

Structure Type	Material	% Impervious	Square Footage	Impervious Area
HOUSE	TYPICAL	100	2520	2520
SHED	TYPICAL	100	252	252
DECK #1	WOOD W/ GAPS	50	2292	1146
DECK #2	WOOD W/ GAPS	50	280	140
POOL	CONCRETE	100	1140	1140
SIDEWALKS	PAVERS	60	412	247
DRIVEWAY	GRAVEL	0	2488	0
TOTAL	-----	-----	9384	5445

Impervious Area 5445 SF / Lot Size 39,900 SF = 13.6 %

Total 100% Impervious Area:	<u>3912</u>	SF
Total Partially Impervious (<u>50</u> %) Area:	<u>2572</u>	SF
Total Partially Impervious (<u>60</u> %) Area:	<u>412</u>	SF
Total Partially Impervious (____) % Area:	_____	SF
Total Developed Pervious Area:	<u>2488</u>	SF

NOTE: The percentage of imperviousness associated with various materials (i.e. pavers, decking, etc.) included on the plan and the identification of "developed pervious areas" must be consistent with the local government's written standards or approved practices prior to July 1, 2008.

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Executive Director

**STATE OF MARYLAND
CRITICAL AREA COMMISSION
CHESAPEAKE AND ATLANTIC COASTAL BAYS**

1804 West Street, Suite 100, Annapolis, Maryland 21401
(410) 260-3460 Fax: (410) 974-5338
www.dnr.state.md.us/criticalarea/

December 12, 2008

Mr. Larry Tom
Planning and Zoning Officer
Anne Arundel County
Office of Planning and Zoning
2664 Riva Road, P.O. Box 6675
Annapolis, Maryland 21401

Re: Herrington Harbour North Critical Area Map Amendment

Dear Mr. Tom:

The purpose of this letter is to officially notify you of the Critical Area Commission's action on the above referenced map amendment. On December 3, 2008, the Critical Area Commission concurred with my determination that the above referenced change to the Anne Arundel County Critical Area maps could be reviewed as a refinement to the County's Critical Area Program. I approved this change to the County Program and affected map on the same date.

This refinement must be reflected in the County's Critical Area Program within 120 days of the date of this letter. Please provide a copy of the updated map reflecting the changes in Critical Area classification to Commission staff as soon as it is available.

Thank you for providing us with the opportunity to review your map amendment request. If you have any questions, feel free to call me at (410) 260-3460.

Sincerely,

A handwritten signature in cursive script that reads "Margaret McHale".

Margaret McHale
Chair, Critical Area Commission
cc: file

